Legislative History for Connecticut Act

Act Number:	07-116		
Bill Number:	1439		
Senate Pages:	3228-3239, 3327-3328	proceedings only in fax file	14
House Pages:	5149-5157		9
Committee:	Judiciary: 5410-5417, 5419, 5424-5430, 5443-5454, 5455-5457, (5460-5463), 5463-5475, 5487-5493, 5497-5498, 5499-5500, 5502-5507, 5537, 5539-5544, (5544-5545), (5547-5548), (5552-5557), 5557-5567, 5568, 5571-5573, 5575-5576, 5580-5581, (5589-5591), 5592-5637, 5638-5639, 5642-5673, 5677-5720, 5724, 5728, 5735-5743, 5747-5781, (5782-5784), 5785-5791, 5823-5859, 5875-5878, 5879-5880		312

Page Total: 335

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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S-546

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2007

VOL. 50
PART 10
3006-3343

were sent wrongfully to jail. And many states across the country have similar processes. They range over a wide array of options on how to deal with this.

And we think it's important that Connecticut finally put into place a more rigorous process to deal with situations such as this.

THE CHAIR:

Thank you, Senator McDonald. Would you remark further on the bill as amended by Senate "A"? Will you remark further on the bill? Senator McDonald.

SEN. MCDONALD:

Mr. President, if there's no objection, might this item be placed on the Consent Calendar.

THE CHAIR:

Hearing and seeing no objection, so ordered. Mr. Clerk.

THE CLERK:

Calendar 525, File 670, Substitute for Senate Bill 1439, An Act Concerning Conservators and Appeals

of Conservatorships and Guardianships, Favorable Report of the Committees on Judiciary and Public Health. Clerk is in possession of an amendment.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Acting on approval, will you remark further, Sir?

SEN. MCDONALD:

I will, Mr. President. Mr. President, this is a, I suspect most of what we do is very important, but this is a very important bill, from the perspective of the Judiciary Committee.

And it addresses the issue of how conservators are appointed in this state to deal with the issues, to deal with the issues of people who need the

S-546

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2007

VOL. 50
PART 10
3006-3343

Calendar Page 20, Calendar 457, Substitute for Senate Bill 1151.

Calendar Page 21, Calendar 506, Substitute for Senate Bill 1451.

Calendar Page 22, Calendar 518, Substitute for Senate Bill 1456.

Calendar 525, Substitute for Senate Bill 1439.

And Calendar Page 25, Calendar 585, Senate Resolution 58. Mr. President, that completes those items previously placed on the second Consent Calendar.

THE CHAIR:

Please call the roll. The machine will be open.

THE CLERK:

The Senate is now voting by roll call on the second Consent Calendar. Will all Senators return to the Chamber.

The Senate is now voting by roll call on the second Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Members voted? If all Members have voted, the machine will be closed. Mr. Clerk.

THE CLERK:

The motion is on adoption of Consent Calendar No. 2.

Total number voting, 35; necessary for adoption, 18. Those voting "yea", 35; those voting "nay", 0. Absent or not voting, 1.

THE CHAIR:

Consent Calendar is adopted. Senator Looney.

SEN. LOONEY:

Yes, thank you, Mr. President. Mr. President, would move that all items referred today from our Calendar to various Committees be transmitted immediately.

H-999

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2007

VOL. 50
PART 16
5012-5313

REP. GIANNAROS:

Thank you, Mr. Speaker.

SPEAKER AMANN:

Any announcements or introductions?

Representative Frey, do you know your mic is on, Sir?

REP. FREY: (111th)

I'm sorry.

SPEAKER AMANN:

Okay, Sir. Announcements or introductions?

We'll put you at ease.

(CHAMBER AT EASE)

Clerk, please call Calendar Number 670.

CLERK:

On Page 21, Calendar Number 670, Substitute for Senate Bill Number 1439, AN ACT CONCERNING CONSERVATORS AND APPEALS OF CONSERVATORSHIPS AND GUARDIANSHIPS, Favorable Report of the Committee on Public Health.

SPEAKER AMANN:

Representative Fox.

REP. FOX: (146th)

Good afternoon again, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

SPEAKER AMANN:

The motion is on acceptance of the Committee's Favorable Report and passage of the Bill. Will you remark, Sir?

REP. FOX: (146th)

Thank you, Mr. Speaker. This Bill essentially is a comprehensive overall of our laws regarding conservatorships.

It is the product of a tremendous amount of work by a Committee that was chaired by Hartford Judge Killian, including law professors, healthcare professionals, legal aid and legal rights groups.

And they all came together to form a compromise that is the product that we have before us here this afternoon.

The goals of this Committee were twofold. They were to ensure that the highest two due process safeguards are in place before a probate court

interferes with an individual's civil rights by forming a conservatorship.

They also clearly establish that the conservatorship is a last resort, and that it is the least intrusive means available by which the individual's affairs can be handled.

Some of the highlights of the Bill include that it will expedite the appeal process, it requires that record be made in conservator proceedings. This had been an issue by many of the applicants who came before the court. Now there will be a tape of these proceedings.

And appeals to the Superior Court will now no longer be at the no go appeal, which is an appeal without a record, but will in fact be a record of what actually transpired at the initial proceeding.

Other highlights include that at a hearing for an involuntary conservatorship, the standard of evidence will be clear and convincing evidence. In addition to that, the rules that will be applied will be the same rules that our Superior Court uses.

And only if the Court finds by clear and convincing evidence that the respondent, the person being conserved cannot manage their own affairs, and they find that the appointment is that least restrictive means available, than only then will a conservator be appointed.

And the Court will also make a finding, and also use that clear and convincing evidence standard, that these are the least intrusive means, and for each area that the determine is necessary for a conservatorship, they will apply that standard.

Also, in order to terminate a conservatorship, if a person feels that they no longer need to be conserved, it will now reduce to the parameters of the evidence standards, which is simply a more likely than not standard, which will be hopefully better for the person who is conserved, that they're trying to eliminate the conservatorship.

There will be a hearing within 30 days of somebody who wishes to have that conservatorship

terminated, and if there's no hearing within 30 days, the conservatorship is automatically terminated.

Also, many times in these proceedings medical evidence is required, but in order to terminate the conservatorship, that individual will not have to, or be compelled to provide medical testimony.

The Clerk has an amendment, Senate Amendment "A", LCO Number 7724. I ask that it be called, and I be permitted to summarize.

SPEAKER AMANN:

Will the Clerk please call LCO Number 7724, previously designated Senate Amendment "A".

CLERK:

LCO Number 7724, Senate "A", offered by Senator McDonald and Representative Fox.

SPEAKER AMANN:

Representative seeks leave of the Chamber to summarize the Amendment. Is there objection to summarization? Hearing none, Sir, you may summarize.

REP. FOX: (146th)

Thank you, Mr. Speaker. This Amendment does three things. It simply makes some technical changes to the Bill, particularly those areas that deal with DMHAS.

It also makes it so that the Bill conforms with changes that were made with last years advance directive bill for persons who were served in patient at DMHAS. It also makes the report that is due by the general hospitals conform to the current statutory language.

It is primarily a technical change to the Bill that passed through the Judiciary Committee, and I would move adoption of the Amendment.

SPEAKER AMANN:

The question before the Chamber is adoption of Senate Schedule "A". Will you remark on the amendment, Sir? Will you remark? If not, let me try your minds. All in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER AMANN:

All opposed, Nay. Ayes have it. The Amendment is adopted. Care to remark further on the Bill as amended? Representative Spallone.

REP. SPALLONE: (36th)

Thank you, Mr. Speaker. Mr. Speaker, I want to rise briefly in support of this Bill. I'd like to thank Representative Fox and those he mentioned for the hard work they did.

This, as many of the Members may know, there's been some controversy regarding how conservatorships are established for citizens in the State of Connecticut.

There's been some media coverage of that, and what we're trying to do here is put in procedural protections to ensure that if a person's liberty interest is at stake that they will be treated fairly, and that a proper record will be kept so that if an appeal is necessary, we'll know what happened, and so that the press and public can monitor how the probate system is working, with respect to conservatorships.

I support this, and I think it's an example of how the different stakeholders in the probate system can work together to make progress toward a better system, and I hope that we can also work as well together on other issues affecting probate. Thank you, Mr. Speaker.

SPEAKER AMANN:

Will you remark further on the Bill as amended? Remark further? If not, staff and guests please come to the Well of the House. Members will you take your seat, and the machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber, please.

SPEAKER AMANN:

Have all the Members voted? Have all the Members voted? Have all the Members voted? Please check the board to make sure your vote has been properly cast.

If all Members have voted, the machine will be locked, and the Clerk will take a tally. Clerk please announce the tally.

CLERK:

Senate Bill Number 1439, as amended by Senate Amendment Schedule "A", in concurrence with the Senate.

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

SPEAKER AMANN:

Bill passes as amended. Will the Clerk please call Calendar Number 668.

CLERK:

On Page 21, Calendar Number 668, Senate Bill Number 1186, AN ACT CONCERNING STATE EMPLOYEES SERVING IN OPERATION JUMP START OR CERTAIN OTHER OPERATIONS, Favorable Report of the Committee on Appropriations.

SPEAKER AMANN:

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY

PART17
5255-5572

2007

brm JUDICIARY March 30, 2007
1:00 p.m.

PRESIDING CHAIRMEN: Senator McDonald
Representative Lawlor

COMMITTEE MEMBERS PRESENT:

SENATORS: Handley, Kissel, Cappiello, Gomes, Meyer, Roraback

REPRESENTATIVES: Fox, O'Neill, Adinolfi, Aman, Barry, Bye, Dillon, Giegler, Hamm, Hovey, Hurlburt, Labriola, McCluskey, McMahon, O'Brien, Olson, Powers, Serra, Spallone, Tong, Wright

SENATOR MCDONALD: We are going to reconvene the public hearing. And we are going to recess the public hearing for 15 minutes so that people can go get lunch if they need it. And when we reconvene, we will be reconvening the Committee Meeting. So we'll stand in recess.

This public hearing is reserved for State Agency Heads and Chief Elected Officials. And the first member on that list is Dr. Paul Amble. Good afternoon, Sir.

DR. PAUL AMBLE: Good afternoon Senator McDonald, Representative Lawlor and distinguished Members of the Judiciary Committee. SB1439

I'm Dr. Paul Amble, the Chief Forensic Psychiatrist for the Department of Mental Health and Addiction Services. I'm here today to speak on Senate Bill 1439, AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS.

We wish to provide testimony on two aspects of this bill that are of concern to DMHAS. The first is that Section 4(h)(2) of this bill, which is relevant to our inpatient service delivery, proposes a change that is directly contrary to a provision in Public Act 06-195, passed by the General Assembly just last year.

In essence, Senate Bill 1439, unless provided in a court's decree, requires a conservator to comply with all health care decisions made by the ward's healthcare representative or healthcare proxy.

However, Public Act 06-195 stipulates that the conservator's healthcare decisions take precedence over those of the healthcare representative in three specified incidences.

We negotiated the exemptions contained in Public Act 06-195 just last year, in good faith, with all parties involved, and believe we need to keep those exemptions in place.

In Section 17a-543, the Legislature enacted due process related to involuntary treatment with psychiatric medications of individuals admitted to inpatient facilities on a civil basis by creating a process for conservators to make decision regarding treatment for patients who are unable to give informed consent.

Section 17a-543(e)(1) requires conservators to quote meet with the patient and the physician, review the patient's written record, and consider the risks and benefits from the medication, the likelihood and seriousness of adverse side effects and preferences of the patient, the patient's religious views, and the prognosis with and without medication.

In Section 17a-543a, the General Assembly accomplished the same due process procedures, but for individuals who are found not competent to stand trial under Connecticut General Statutes 54-56d, which is in accordance with the 2003 United States Supreme Court decision in United States v. Sell.

Unless Section 4(h)(2) of Senate Bill 1439 is amended to include language similar to that contained in Public Act 06-195, the Legislature will be creating a conflict between two portions of the statutes, and will be potentially eliminating the ability of DMHAS inpatient facilities to seek appropriate involuntary treatment in certain circumstances, even when a patient is placing himself or herself at risk.

Now there's a second concern which we wish to rise regarding Senate Bill 1439. And that is in the next section, in Section 4(h)(3) as presently worded, will limit the pool of unbiased neutral attorneys who may serve as conservators for individuals.

We understand the need to protect an individual's civil rights, but we ask that you consider in your deliberations that individuals in our system may not be able to make good decisions based on their psychiatric disability.

As written, this section considerably narrows the Probate Court's discretion in appointing a conservator whenever a patient merely quote communicates a preference, closed quote, for a particular individual.

In addition, the section creates a new criterion for the Probate Court's consideration, namely, whether a proposed conservator has knowledge of the respondent's preferences regarding the care of his or her person.

No attorney appropriately maintained on the panel of the Probate Court Administrator is likely to meet this criterion. Thus, this new requirement may result in the selection of a conservator who is unlikely to be able to play a neutral and responsible role in deciding what is best for the person.

The combination of these two changes represents a fundamentally different approach to the way Connecticut has heretofore conceived of the nature of substituted judgment and its appropriate balancing of interests.

It could substantially interfere with our ability to treat those patients who require treatment in order to be well enough to leave

the hospital care, thus wasting precious and finite resources.

It could also substantially interfere with our ability to treat individuals who are subject to various provisions of the criminal justice system. For the above-listed reasons, we do not support Senate Bill 1439 as currently worded.

It is our understanding, however, that a compromise proposal has been offered by Judge Killian and a group that worked on this matter. We have seen that version and it does include the exemptions that we would require.

Thank you for the opportunity to speak on this issue of concern to DMHAS related to Senate Bill 1439, and I'd be happy to answer any questions.

SEN. MCDONALD: Thank you very much. I apologize for how loud my computer was. Are there questions? Representative Fox?

REP. FOX: Thank you for your testimony and your patience here this afternoon. You mentioned at the end of you testimony the bill that's been worked on with Judge Killian.

Is that a bill that you are in agreement with, the way that's being presented? Or do you have specific concerns about any areas?

DR. PAUL AMBLE: I have not fully even seen that bill. I've heard about it. I've heard that there's consideration being given to the point

that the Department of Mental Health and Addiction Services has raised. But I couldn't comment on the specific wording.

REP. FOX: Fair enough. Okay. But as we go forward in the next couple weeks and try to get a bill out, is that something that you'd be, you know, able to review and try to get your comments back to us quickly?

DR. PAUL AMBLE: Yes. The Department would be very interested in reviewing that and has played some role in expressing its interests. Yes.

REP. FOX: Okay. Thank you.

DR. PAUL AMBLE: Thank you.

SEN. MCDONALD: Is there anything further? If not, thank you very much.

DR. PAUL AMBLE: Thank you.

SEN. MCDONALD: Next is Deputy Comptroller Mark Ojakian. Is Mr. Ojakian here? If not, James McGaughey? Followed by Judge James Lawlor.

JAMES MCGAUGHEY: Good afternoon, Senator McDonald, Representative Lawlor and Members of the Committee. For the record, my name is Jim McGaughey. SB1439, 1453 HB5675

I'm the Executive Director of the Office of Protection and Advocacy for Persons With Disabilities, and I'm here to comment on three of the bills that are on your agenda this

afternoon. And I've submitted written testimony.

The first two bills are Senate Bill 1439, AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS and Senate Bill 1453, AN ACT CONCERNING THE TRANSFER OF AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.

These bills, as they did last year, or their counterparts last year, come before you basically out of a sense of frustration that has built amongst the advocacy communities for seniors and for people with disabilities about the whole conservatorship process.

There is just a number of examples and I think you'll hear from people today who will tell you their personal stories representing individuals or perhaps, in fact, having lived under a conservatorship.

I won't go into a great deal of detail other than to say that our office frequently encounters people who either could have benefited from some very limited, narrowly tailored form of conservatorship, but instead got a full conservatorship and lost all their rights.

And we also run into situations where people are living in nursing homes, were placed in nursing homes or other long-term care facilities.

Their homes were sold. Their apartments vacated. Their furniture sold off. All of which makes it much, much harder for those individuals to recover their lives and regain a place in the community.

So there's a lot at stake in these bills. I did submit written testimony based on the language of the bills as published. There is this substitute language that has been developed which I have read, and I think it's quite good. The so-called Killian Committee.

And I won't take up much more time on this because I think you'll hear from Judge Killian and some of the members of the committee.

But it does significantly advance the policy in this area and I think it's notable in part because there is so much consensus around an area that there had been so much conflict in previously.

But it also is very, very good policy, and I think it's worthy of your attention and consideration.

The other bill I just wanted to mention briefly is Committee House Bill 5675, AN ACT CONCERNING THE DURATION OF PSYCHIATRIC EVALUATIONS.

This bill would essentially extend one of the two 15-day periods that are currently allowed when an individual is hospitalized pursuant to a physician's emergency certificate in a psychiatric hospital.

JAMES MCGAUGHEY: [inaudible]. Then you can hear from him.

SEN. MCDONALD: Thank you very much. Next is Judge James Lawlor, then Senator Edith Prague. And I understand Mr. Ojakian has joined us. He'll follow at that time. Good afternoon, your honor.

HON. JAMES LAWLOR: Good afternoon, Senator McDonald, Representative Lawlor and Members of the Committee. Thank you for this opportunity to be here.

SB 1438, 1454, 1272, 1439 1453, HB5675

For the record, I'm Probate Court Administrator for Connecticut, and I'm going to speak to several of the bills that are before you this afternoon.

Just in passing, Senate Bill 1437 is a bill involving birth certificates for adopted persons. This is a unique bill that has probably not come before you before. It involves children adopted from other countries.

The problem that we're facing is that children come in to the country with certificates bearing the wrong date of birth. Children from Africa, for example, will have no date of birth because they don't record it at the child's birth date.

Today, Kathleen Heller and Michael Dunay, parents of children adopted from other countries, are going to be here to testify to their experiences. We fully support the bill.

I've never turned downed $3 million in my life. But I think that it has to be a comprehensive approach. There was a day, I think, when state involvement could have resolved this problem in its entirety.

But I think that, at this point, the problem has become so great that it has to be a resolution which involves the participation of my office, of the courts, and I think we're going to need the help of the state.

But this one isn't going to do it. And I don't want to leave the impression that we've solved our problems, because it's not going to do it.

Finally, as to the conservatorships, there are two bills, Senate Bill 1439 and Senate Bill 1453, which have been offered. We have been facing problems with conservators for the last two years. The problems come, primarily, from criticism from the outside.

There are three cases that got considerable attention. One was in South Windsor, one was in Waterbury, and one was in East Haven. Our practice, when we know of problems, when problems are raised, is to do an immediate and complete investigation.

I can tell you that I've talked with the judges who are involved in these. Tom Gaffey from my office, who was here today, made a thorough inspection of the records. I'm not going to get into the debate of whether or not these three cases truly represent problems.

I am satisfied that there are at least two stories and there are probably more stories on each of these cases. I am going to say, the reason I'm not going to enter a debate on it is because we handle 4,200 cases a year in the Probate Court system.

And I think, unless I could sit here and tell you that every one of them is properly done, than I shouldn't be debating two of them.

I can tell you that somewhere in this system, three and probably a considerable number more than three, just by the rule of averages, is not going to work.

But we've investigated these. I'm comfortable with the way they've gone. I think I just need to say that in support of the judges.

I think two of the judges who were involved in this are here today, and I think that they need a public statement of support from us.

With respect to the bills themselves, we know that this conservator issue has to be considered. I've always believed that a good self-examination is important. We did it in connection with the Children's Court and came out much better off for it.

One of the judges told a story the other day about the family that cooked the roast beef every Sunday and how they followed great-grandmother's old recipe and they seasoned it and cooked it at a certain temperature. And

the thing that they did, though, is they cut the end off the roast beef.

And one day they began wondering why it was, and one of the family members went to the hospital where the elderly lady who started the thing, where she was staying, and they said Grandma, you know, we use your recipe for the roast beef.

And what we do is we season it as you did, and we cut the end off that you did. We understand the rest of it, but we don't understand why you cut the end off the roast beef.

And she said, I know why I did it. I didn't have a pan that was big enough to hold it. But I don't understand why you do it. Well, I think that rule really applies to just about any institution. You've got to go around and you've got to say why are we doing this. And is there a reason to do it today?

And for us, Bob Killian did it. He did a remarkable job. He pulled together people from the hospitals, lawyers from the hospitals, people from Legal Aid who had a real interest as set forth in these two bills, medical people, and people from DSS. It's a diverse crowd and they produced a product which is remarkable.

I looked at it and the thought that went through my mind was that probably I, as a lawyer, and probably most of the people on this panel, could produce a product as good as this. But at the same time, he settled the needs and

requirements of this entire group drawn together.

And it's my understanding that the product that will be presented to us today is one that is going to reflect the, I think everyone is going to find something that they don't like in it. But I think everyone is going to agree that this is a good bill and one that should be advanced.

So I encourage, I support the conservator bill. I encourage your favorable consideration of Senate Bill 1272 and Senate Bill 1437 and those others that I have been supportive of. I appreciate your time and I'd be pleased to respond to questions.

SEN. MCDONALD: Thank you. Are there questions? Representative O'Neill?

REP. O'NEILL: Besides the examination for the conservator, there were these three cases that you reference, and so on, what's the normal process if somebody's convinced that there's been an inappropriate appointment of a conservator? SB 1439 SB 1453

What are the options that either the conserved person has or someone who believes that the, say a relative or a friend, who thinks that they've been improperly placed under a conservator?

HON. JAMES LAWLOR: In the past, Representative O'Neill, it was to appeal the original order. Of course, if that wasn't taken timely after

the original order then that wasn't available any longer.

So what it ends up being is kind of a makeshift process. My recommendation always was to send a letter to the court and ask for a review or an accounting. And we always found a way to get a review.

One of the things that I used to do back in the days was, once a year, we'd get a list of the people and just go out and see them and see if there were any problems.

We'd go to the convalescent homes. So we'd see if there were any problems, which is to say it was really pretty loose. I think which Judge Killian has fashioned is something which is going to be much more effective and much more efficient. The visits, I can tell you, were revealing for us.

We usually got a list and I did some of them myself and we had other staff do them. So that the staff ended up having a sense of what this was. We dropped in, we didn't give notice.

We dropped in, we had a sense of the quality of the various homes. We had an immediate sense of the people. And we did in the private homes as well.

I think that this bill is broad enough to permit us to apply any kind of action such as that. And I think it will leave the individual judges to have the flexibility they need with

the structure to assure that it's done properly.

REP. O'NEILL: Have there ever been cases where there was a determination that someone, well, I'm assuming that there have been appeals. Can you recollect cases where someone has appealed and been successful if they've been able to file the documents within the time?

HON. JAMES LAWLOR: We didn't have many appeals. The cases were pretty clear. My experience was it was a rare one that needed a lot of consideration. Most of the people were in the convalescent homes in the first place.

We had some where we rejected the application, which was not common. But we had some where we rejected the application and we had some where we restored people.

They were able to come in and, usually what we did, my process usually was to ask them to give me a doctor's letter. The tip-off was they couldn't get a doctor's letter.

But in many of the cases they'd come in with a doctor's letter and we might ask the doctor to sit in with us just to be careful. But we restored them.

REP. O'NEILL: Okay. So this would be a doctor's letter that they're now competent?

HON. JAMES LAWLOR: Sure. And in many cases they came to be competent because they got good

care, and they weren't getting good care before.

REP. O'NEILL: Thank you, Mr. Chairman.

REP. LAWLOR: Further questions? If not, thanks very much, your honor.

HON. JAMES LAWLOR: Thank you.

REP. LAWLOR: Next is Deputy Comptroller Ojakian.

DEP. COMPTROLLER MARK OJAKIAN: Thank you, Representative Lawlor and Members of the Judiciary Committee.

For the record, I am Deputy State Comptroller Mark Ojakian and I'm here to testify this afternoon and offer comment on House Bill 7382, AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR PROBATE COURT JUDGES AND EMPLOYEES.

The Office of the State Comptroller would support including Probate Court judges and employees in the State Employee Health Insurance Plan if the funds appropriated to the Probate Court to pay for health insurance are transferred accordingly to the active State Employee Health Insurance account, which is managed by our office. Any difference in that funding would have to be made up by a new appropriation next year.

Just a couple of points of clarification that I think would helpful to the Committee as they consider this proposed legislation. Currently, the Probate Judge and Probate Court employees

might be helpful to me, at least, to be able to follow [Gap in testimony. Changing from Tape 1A to Tape 1B.]

HON. JAMES PURNELL: --thank you.

REP. LAWLOR: Other questions? If not, thank you very much.

HON. JAMES PURNELL: Thank you.

REP. LAWLOR: Next is Judy Desautell. And Senator Prague, we'll get to you next.

SEN. PRAGUE: That's all right. Perfectly all right.

JUDITH DESAUTELL: My name is Judith Desautell. I SB1439 am a survivor of the Probate System. I am here to testify in support of the bill reforming the Probate Court system so that others are spared the experience I endured.

I am a former teacher, mother of two, grandmother of three. I have hereditary spastic paraplegia, a disability most of you have probably never heard of. It affects my body from about midpoint on my spine down.

I am a former homeowner. I had my front yard converted to a butterfly garden which was pretty enough that people would stop and take pictures of it.

In the year 2000, Manchester Probate Judge John Cooney held a hearing at my home. He said that anyone with my disability did not have a brain

that functioned. He ruled that I was incapable of managing my affairs and appointed conservators of both person and estate.

I definitely did not need a conservator of estate. My finances were in perfect order. There was an article written about me in the *Journal Inquirer*.

And at that point, the person who was conservator of estate told the reporter that no one ever should have sat in his position.

My mortgage had been paid off early. I had taken out a home equity loan to finance a new roof and upgrade my kitchen. At that time, I had been living on SSI.

And most people in that situation are not allowed to take out home equity loans. But my credit was good enough that it was done with no problems.

Judge Cooney ordered that I be placed at Westside, a nursing home that received considerable notoriety for violent assaults by inappropriately placed psychiatric patients.

My home was sold to pay for my being in the nursing home. The profits should have been deposited in the trust that had been set up by my mother.

My personal items were thrown out. There was never any mention of putting things in storage because it was intended that I would be permanently institutionalized.

The conservator of person said she would bring me my clothes. She brought ten bags of things that were put on the bed. They included [inaudible] clothing, but also included a bag of material scraps and a bag with a dead plant. She did not bring clothes from the other closets, did not bring shoes, did not bring jackets.

When they were getting my house ready to sell, a lot of things were thrown out or taken. They did bring a bag of stuffed animals, however. They did not bother to put in two antique stuffed animals or some collectable stuffed animals. They also threw out pictures of my family and friends that can never be replaced.

I acknowledge that I needed help. But it was help that I could have, and should have, received at my house. I did not receive any physical therapy in the nursing home. I was not allowed to see my medical records. I was not allowed to meet with the press.

When I received mail, it had been opened. Anything I [inaudible] wanted to mail had to be approved by the conservator. They canceled my medical insurance and a credit card.

In canceling my medical insurance that meant I had to pay for any medical services I received outside of Connecticut, also certain doctors who do not take Medicaid.

When they cancelled my credit card, they not only cancelled the card but destroyed my

history with that bank, thus canceling life insurance that they had given me for having a credit card with them.

The conservator of estate resigned his position about six months after I was placed in the rest home. Shortly before he did, I got a copy of my phone bill and found that he had not set up any kind of plan for me, so I was charged the highest rate for every call, costing my in month $70. That should not have been.

He also had not paid my phone bill. I called AT&T to find out, and they told me they had not stopped my phone service or added a penalty because, until I had been removed, my bills were always paid.

The bill before you would have prevented this. First, the bill requires Probate Court Judges to listen to people like me. I took a paper into Judge Cooney with several questions that I wanted answered. He said, I don't have to do that, and refused to look at the paper.

I have a brain. I have reasonable wishes and can make reasonable decisions. My voice should have figured somewhere in this discussion. Second, the court could have imposed a limited conservator to simply arrange for more comprehensive services.

Third, I could have had my case removed to Superior Court where I am sure I would have gotten a fair hearing before all my rights were removed.

For example, there was no evidence, much less clear and convincing evidence, that I could not manage my finances. As I stated before, a conservator of estate should never have been appointed.

Legal Aid helped me to get out of the nursing home and into an apartment. They advised me to get out of Manchester and to have my Probate Court file transferred to a new judge.

I moved to East Hartford. I was restored to capacity by Probate Judge Allan Driscoll, who told me I never should have been conserved and removed from my home. I ask you to please pass Senate Bill 1439 to prevent this from happening to others.

REP. LAWLOR: Well, thank you, Ms. Desautell. Through the miracle of the computers we all have up here and the Google searches and everything, the Members of the Committee have been reading the article in the *Journal Inquirer*, we were able to find that. And we can read your testimony and your story is a very compelling one, obviously.

I think especially to have people in the Legislature find out that sometimes, from all the stories we hear, sometimes in every person's life you find your value to the world is defined by what you're doing right now, which is changing the world for the better through a personal experience you had. So we appreciate that. Are there questions? Senator McDonald?

SEN. MCDONALD: Thank you, Mr. Chairman. And not so much a question, but just to tell you, Ma'am, that you are a very remarkable woman. I thank you very much for being here.

REP. LAWLOR: Representative Hamm?

REP. HAMM: Thank you, Mr. Chairman. Thank you so much for coming in. I do have a question. Could you tell me how this whole thing started? That the judge just showed up at your house?

JUDITH DESAUTELL: It started because I had had surgery 17 years ago, at which I was told that if I needed help, if I landed on the floor and could not get up, to call 911. And it did not matter how often I did it. I did call.

The year that I was forcibly removed from my house I had called them 16 times. There were certain people who came who really resented being there.

I had one policeman who picked me up off the floor by grabbing my wrists and pulling me from the floor that way. It's a wonder he did not dislocate my shoulders.

REP. HAMM: Thank you so much. I appreciate that.

REP. LAWLOR: And I just recommend, if people want to read the entire story in the *Journal Inquirer*, because people listen to our hearings beyond this room, so if you happen to be listening and you want to search it on the computer, you search Judy Desautell, D-E-S-A-U-T-E-L-L and *Journal Inquirer*, you'll get that

article and it really illuminates the whole situation.

JUDITH DESAUTELL: If not, I have some copies.

REP. LAWLOR: I'm sure you do. I'm sure you do. And you should. And I hope that everyone who's listening gets a chance to read that and think about the story you told.

JUDITH DESAUTELL: That article was done over a period of about 14 months by a really good reporter.

REP. LAWLOR: Sounds that way. Sometimes reporters can be good people.

JUDITH DESAUTELL: She is.

REP. LAWLOR: Even for the *JI*? Just kidding, just kidding. Senator McDonald?

SEN. MCDONALD: You know, actually I also wanted to say, not to you, Ma'am, but to your counsel, that you sound like you were very well served by the folks at Legal Aid. And, you know, it's a job, but it's also a mission. And they seem to have done very well by you.

And getting you out of Manchester seems to have been the right thing to do and made a world of difference in your life.

JUDITH DESAUTELL: You mean Veronica Halpine? The angel?

SEN. MCDONALD: The angel, indeed.

JUDITH DESAUTELL: Yes.

SEN. MCDONALD: Thank you, Mr. Chairman.

REP. LAWLOR: Now, in your written statement you skipped over one part about your cat. How is your cat doing?

JUDITH DESAUTELL: The cat is now living in Windsor.

REP. LAWLOR: Oh, okay. I just wanted to make sure.

JUDITH DESAUTELL: He was gotten from the Manchester pound by a former neighbor.

REP. LAWLOR: That's great.

JUDITH DESAUTELL: He lives with a number of other animals and enjoys the others very much.

REP. LAWLOR: Maybe you didn't hear it, but Senator Kissel said if your cat is living in Windsor, it might be his constituent so make sure the cat votes for Senator Kissel.

JUDITH DESAUTELL: You might be interested. The cat's name is Scheiba. So you know what the word sheiba means?

UNIDENTIFIED SPEAKER: No.

JUDITH DESAUTELL: It's a Russian word for the word hockey puck.

REP. LAWLOR: Hockey puck?

JUDITH DESAUTELL: Hockey puck. And he is about as affectionate as a hockey puck.

REP. LAWLOR: There you go.

SEN. KISSEL: I know some people like that.

REP. LAWLOR: There are a few of those around here. That's right. Are there any other questions? If not, thanks again for sharing your story. I know this is not the first time you've shared the story, but it is continuing to make a big impact. So it's much appreciated. Thank you.

JUDITH DESAUTELL: Thank you.

REP. LAWLOR: Next is Melissa Marshall. I'm sorry, next is Senator Prague followed by Melissa Marshall.

SEN. PRAGUE: Well, Senator McDonald, Representative Lawlor and Members of the Judiciary Committee. It's pretty hard for me to say anything about this bill. I tell you, some of the things that conservators do is just, why this bill is before you. SB1439

And I'm deeply appreciative, on behalf of all the senior citizens in this state, that you have both of these bills before you. Particularly Senate Bill 1439, that mandates, you know, the least restrictive environment, that makes sure that conservators don't do to others what they did to Miss, I think her name was Desautell.

It's been going on for too long. It doesn't matter where a senior lives if that senior wants to stay there. If the house is piled with newspapers or she has, he has 40 cats. It doesn't matter. This is where a human being wants to stay and wants to spend whatever time they have left on this earth.

And it is not anything but unconscionable to thing to think that a conservator would come along and just disrupt their lives and take away their independence and take away the way the want to spend the little time they have left.

So I thank you for bringing this bill forward. I have seen things happen to seniors that I never want to see happen again.

So thank you very much. Miss Desautell certainly told it as it is and if that didn't convince you, nothing will. So thank you.

SEN. MCDONALD: Well, thank you, Senator Prague, and I guess I would take issue with one thing you said. If that didn't convince us, nothing would.

I suspect you would do in convincing any member of the General Assembly on the subject. And you've been a great advocate, not only on this issue, but on so many issues for seniors.

I appreciate you being here today. But perhaps more importantly, for being here every day fighting for this issue and fighting for so long.

SEN. PRAGUE: Senator McDonald, thank you. Thank you very much.

SEN. MCDONALD: Are there any questions for Senator Prague? Representative Hovey?

REP. HOVEY: Thank you, Mr. Chair. Hi, Senator.

SEN. PRAGUE: Hi.

REP. HOVEY: I just had a question about how one would find themselves in the position of having a conservator when they have family members. I would think that a family member would have first right of refusal, so to speak, around all of these issues. But that's not true?

SEN. PRAGUE: You know, Representative Hovey, I don't know how the legal system works with family members. Sometimes family members don't get along with each other and they can't decide who's going to do what. Or they don't want to take that responsibility.

And, you know, then the court has to step in and appoint a conservator. And there are times when a conservator may be needed. However, a conservator should never override the wishes of that elderly person.

And that's my issue with whoever the conservator is, if there has to be one, that the wishes of that elderly person has to be primary.

And that there are lots of services out there that can keep elderly people at home. Putting them into a nursing home is that last thing that any senior wants, and should be the last resort because we have developed, in this state, a system that can provide care at home.

And that's where a conservator should be concentrating. On accessing what's available to keep that senior where that senior wants to be.

REP. HOVEY: Thank you, Madam. And I appreciate your perspective. I also agree with a lot of it. But I just happened to be in the ladies' room with someone who's going to testify today who is the daughter of someone who had a very similar circumstance as the previous lady occur to her parent.

And so I was left wondering how does that kind of thing happen when you have a child, or you may have, you know, a sibling that's willing to intervene on your behalf? That's what I'm really concerned about. Thank you.

SEN. PRAGUE: Thank you, Representative Hovey.

SEN. MCDONALD: Is there anything further? If not, thank you very much, Senator Prague.

SEN. PRAGUE: Thank you, Senator McDonald, for bringing this bill forward.

SEN. MCDONALD: Next is Melissa Marshall followed by Judge Killian, and his committee perhaps.

MELISSA MARSHALL: Good afternoon, Senator McDonald. I'm Melissa Marshall and I'm the Executive Director of Advocacy Unlimited. AU is a consumer-run organization. It empowers people with psychiatric disabilities through training in self, systems, and legislative advocacy.

I'm here today to testify on two bills. Committee House Bill 5675, AN ACT CONCERNING THE DURATION OF PSYCHIATRIC EVALUATIONS, and Raised Senate Bill 1439, AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS.

I'm testifying against Committee House Bill 5675. This bill extends the amount of time that commitment can be given under a Physician's Emergency Certificate from 15 to 30 days.

Doing this would constitute a massive deprivation of rights without adequate due process. This enormous disruption would have a huge negative impact on individuals' recovery.

Through the Department of Mental Health and Addiction Services, Connecticut has adopted a recovery-centered philosophy. The proposed legislation flies in the face of recovery-centered values.

Don't make Connecticut's mental health legislation regressive. On behalf of AU, I urge the Committee not to favorably consider this bill.

Conversely, I am testifying in favor of Raised Senate Bill 1439, AN ACT CONCERNING

CONSERVATORS AND PROBATE APPEALS, with the substituted language proposed by the Conservator Revision Committee, which is chaired by Judge Robert Killian, who is going to be speaking after me.

The language of the committee elaborates on changes in the statute proposed in Senate Bill 1439. The present conservatorship statutes are archaic and need the substantial revisions that have been suggested.

The proposed language will finally bring the State of Connecticut into alignment with the principles articulated by the President's New Freedom Commission and mandated by the Americans with Disabilities Act through Olmstead and other decisions.

The language proposed by the committee requires that a conservator is appointed only when it is the least restrictive mean available and insures the highest due process safeguards.

The committee's recommendations are not a deviation from the norm. Rather they are based on national model statutes, including the Uniform Guardianship and Protective Procedures Act in 1997, and the Model Probate Code, which was most recently amended in 2006.

In recent years, many states have been adopting many, if not all, the provisions in these model statutes. It's time for Connecticut to bring its conservatorship statutes into the 21st century.

Elderly residents and residents that have or could acquire disabilities, potentially all of us, deserve it. Thank you for your consideration and I'm happy to answer any questions.

SEN. MCDONALD: Thank you. Are there any questions? Representative Hovey?

REP. HOVEY: Thank you. I just went at looked at House Bill 5675, and the way I'm reading it, maybe I'm incorrect, but it seems that it extends the total amount of time to 45 days. So it's initially the 15 days, and it used to be it could be extended--

MELISSA MARSHALL: 15 more.

REP. HOVEY: --for 15 more, which would be a total of 30 days.

MELISSA MARSHALL: And now it's 45.

REP. HOVEY: So it's 45 days?

MELISSA MARSHALL: Yup.

REP. HOVEY: Okay, great. Thank you very much.

MELISSA MARSHALL: Thank you.

SEN. MCDONALD: Is there anything further from Members of the Committee? Representative Fox?

REP. FOX: Just a follow-up on that bill. It's the duration of psychiatric evaluations proposal. The argument in favor, I know I recognize

Project, who are members of the committee to revise this, will accompany me.

They are signed up to speak later, so, they're not really going ahead of anybody. They're freeing up space later in the proceedings.

REP. LAWLOR: I'm sorry, Judge. It's Mr. Stark and--

HON. ROBERT KILLIAN: Behrendt, B-E-H-R-E-N-D-T.

REP. LAWLOR: Okay. Thank you.

HON. ROBERT KILLIAN: First, as a point of personal privilege, may I quash an incipient rumor that it was the Killian Committee. Not only was it not the Killian Committee, it was not my work product. (SB1439)

I was privileged to serve on this committee and privileged to be its Chair and privileged to commend its work product to you.

But that's because a group of ten people, all of whom are in my prepared testimony, the list of who was on the committee is there, worked hard together. And I mean hard. There were hundreds of hours that went into this over the past several months.

The two gentlemen with me were the principal authors of the work product. And along with Paul Hudon, a lawyer in private practice in West Hartford, and Cynthia Blair, a lawyer and clerk in my court, they did most of the lifting. So it's the Stark, Behrendt, Hudon,

Blair Committee, and I played a relatively small part.

If I may just address the generic issue of conservators, currently, as Judge Lawlor pointed out, we appoint about 4200 conservators a year in Connecticut.

Cumulatively, there are 19,200 conservatorships open in the State of Connecticut. When appointed, people live long, and conservators' duties extend over often multiple years, mercifully.

I don't often speak on behalf of all my colleagues. But I will presume to do so today. And that's in saying these are my colleagues, the Probate Judges.

I don't think anything gives any of us greater pleasure than we see the triumph of human spirit over physical infirmity and an opportunity, as my colleague in East Hartford had, to restore to capacity and full legal rights somebody like Miss Desautell.

That's a privilege that we are afforded all too rarely. But when it happens, it makes us all very happy.

There are three areas in which all your conservatorship bills propose legislation, and our recommended language are concerned. They are procedural due process, making sure people get proper notice and they get proper appointments of counsel in timely fashion, and counsel who are properly trained and able to

fulfill the constitutional mandate of being effective counsel.

There are substantive due process issues that relate to when the court has to act on what type of issue, such as the decision to sell a home or permanently relocate somebody into a long-term care facility.

And there are substantive issues that relate to the standards of proof and the manner in receiving evidence and what evidence should not be countenanced, for example, the forced examination of a respondent, which is prohibited under our proposed language.

And there are philosophical issues that suggest to the committee that there are areas in which we have to change the way we think about conservators. And it's been alluded to by many of the previous speakers.

But fundamentally, it's recognizing that the role of a conservator is not as much to conserve as to serve. Maybe we should change the name to a servator.

And require these people to provide assistance only in the limited areas where someone can't function for themselves, or where they need such assistance.

It also recognizes that state action should defer to individual decision making, appointments of healthcare agents, healthcare proxies, powers of attorney, the designation for the Social Security system of someone to

receive and help you with the expenditure of your benefits. That we should defer to that if it is appropriately meeting the needs of the individual.

These three areas of concern we have to address for two primary reasons, one because it's constitutionally mandated, and two, because it's right. It's decent. It's fair, and it's just.

I've submitted written testimony that outlines some of the terms of my bills and I want the authors of our proposed legislation, which is different only in some conceptual ways, not in the fundamental issues that it addresses from the other bills before you today.

And after they've had a chance to speak their piece maybe if you have questions I'd like to answer them.

SB 1439

PROF. ROYAL STARK: Thank you, your honor. Thank you, Senator McDonald, Representatives and Senators of the Committee. I'm Royal Stark. I am the Director of the Health Law Clinic at Quinnipiac Law School, and I've been involved in this committee, and proudly served as a member on this committee.

I think that the most significant thing I'd like to say today is that rather than my appearance last year, when I was focusing on the negative and the reasons why we needed reform in this area, I can come this year and say that, because of so much hard work that's gone into addressing these issues over the past

year, that I'd rather speak about the chance we have to really make a significant difference on behalf of people like Judy Desautell, but many, many others.

The proposal that we have come forward will put Connecticut more in line with the Uniform Guardianship Act and Protective Proceedings Act of 1997, which strives to have a less restrictive alternative approach.

And it will also bring us, I think, closer to having real, practical possibilities to have people either avoid being conserved or to be relieved of that at an earlier stage than they ever have before.

I believe that this is only a start. That we are going to need to actually transform the culture of the Probate Courts in order to have this go through. But I love the challenge should this legislation pass.

As one of the people who was involved in writing the proposal that is before you today, Senate Bill 1439, as well as the subsequent version which I urge you to adopt in its place, I can only say that it's not only they produce of a lot of hard work and very earnest work by the members of the so-called Killian Committee, but also by many members of the private bar whose work proceeded the advent of the committee.

Tom and I worked for many months with members of the CBA so-called Uniform Guardianship working group, and I'm not going to mention

names because they can or cannot testify for themselves, but we are very impressed that there is a broad consensus amongst the bar and amongst many folks who are not necessarily here today, that there is a need for reform. And we are very pleased to present our proposal.

THOMAS BEHRENDT: I'm Tom Behrendt. I'm Legal Director at Connecticut Legal Rights Project and I was privileged to serve on the committee with Judge Killian, Professor Stark, and many others.

It was a multidisciplinary group that worked long and hard and, also, I do want to recognize the efforts, over a lengthy period of time starting early last summer, of the Bar Association work group as well.

I think one of the important things to add is that sometimes it seems that there's, I think it's 117 now, probate districts, that there's 117 different rules of practice and procedure.

I think while bringing up to speed with national standards and best practices, it would also lend some uniformity to conservatorship procedures around the state. And I think that's very important.

Along the way we had consulted with many experts, folks within the state and experts on a national level, including the Director and Assistant Director of the American Bar Association Commission on Law and Aging.

There were experts from around the country and Probate Judges from other states that participated in symposia that the Estates and Probate section of the bar put on, the most recent one being last October [inaudible]. I think it's a good piece of legislation and I urge your favorable consideration.

SEN. MCDONALD: Thank you. And thank you to all three of you for consolidating the testimony to help expedite our hearings. Representative Hamm?

REP. HAMM: I didn't understand. Are we in support of Senate Bill 1439? I thought you had indicated that there is a second companion that you prefer.

THOMAS BEHRENDT: Yes, if I may. The language that's in the printed version of the bill is to be substituted and supplanted. That was actually a snapshot of a draft that was submitted close to two months ago.

The work on the bill that, where the initial work was emanated from the Bar Association work group, Judge Killian's committee worked long and hard on it, and it evolved from there. And it's that language that I've attached to my testimony.

REP. HAMM: So it's the language attached to the testimony that is the one that you are in support of?

HON. ROBERT KILLIAN: That is correct, yes.

REP. HAMM: As a follow-up, Mr. Chairman, I have a second question. You guys are kind of like our experts. Any ideas on how we go about changing the culture?

Since we all have to acknowledge that that's really what this is all about. Is there training going on, your honor? I mean, how are we doing it?

HON. ROBERT KILLIAN: Last week 57 of my Probate Judge colleagues gathered for two days at Central Connecticut for intense, all-day seminars limited to the topics of conservatorships ranging from due process questions to medical issues relating to geriatric psychometry as a subspecialty of psychiatry.

Understand that only some of our conservators are geriatric. A growing number are not geriatric. Young, for whom conservators serve sometimes for decades. That's a truism in my court, for example.

I don't think that there is a bad culture in the Probate Courts. We handle a lot of these in some districts. I mean, there's 4,000 last year, 400 of the cases were in my court. If you take the top ten courts, well over half of the conservatorships are the top ten courts.

There is both a disparity in terms of where the cases are handled and what services are available in different parts of the state. Senator Prague, the great book by Dean Acheson, *Present at the Creation*, could apply to Senator

Prague, because she was present at the creation, not of the universe, but make sure you tell her I said that, but at the--

SEN. MCDONALD: Oh, we will. [Changing from Tape 1B to Tape 2A]

HON. ROBERT KILLIAN: Thanks, Senator. At the creation of this new sensitivity to these types of issues, particularly as they relate to our ageing population, I wish that I could agree that there adequate programs to support community-based life for people with significant disabilities.

There are better programs than there were 23 years ago when I started in the Hartford Probate Court, but they still glaring inadequacies.

And ironically aren't as prevalent or available in parts of the state that are more rural. They tend to be centered in the urban areas. Or even in the wealthier parts of the state, where these programs aren't as prevalent.

So I think that there is great willingness on the part of my colleagues to make a concerted effort to study this issue and to come to an understanding.

Representative Hamm, we all deal sometimes in legal shorthand. And when you've done a lot of these things, you can develop a certain callousness and forget that fundamentally what you're doing is stripping somebody of their civil rights.

And that's a frightening thought. And that's what we do. And what we all have to recognize is the most important thing we probably do any day that we walk into our court is decide on whether we're going to take away what for Americans are our most treasured and valued right, our civil rights.

And I think that what has happened by the Tom Behrendts and the Royal Starks, the Marilyn Dennys, and the others who come in, you know, I would be less than candid if I didn't say that when one of them walks into my court, I don't say Mother of God, what am in store for now.

And what I am in store for is generally a dose of good lawyering, tough lawyering, and a primer that reminds me of why I'm there. I don't always agree with them. I often don't agree with them. But that's what good lawyers do. And that's what's happening, I think, throughout the state.

I think some of the spotlight on troubles, this is a lot longer answer than you expected from your simple question, that's what I always do.

But the spotlight on the problems has reminded us all of what we're actually doing and I think we are responding to it each in our own way and maybe all having to accept freedom, according to Robert Frost is moving easy in harness, I suppose that good judging is moving easy in harness, too. And I think there's a growing willingness to accept that reality.

REP. HAMM: Well, I guess what I want you think about, which is why I'm flummoxed, quite frankly, the fundamental outrage that I think has brought us all here, is we stopped listening to the person if front of you. And I don't know how that happens.

I mean, you say develop some callousness. I don't know how we get to that place where the fundamental priority, along with weighing all the other factors and all the other opinions and statements and affidavits that are in front of you.

But how did we get to a place where our law literally doesn't give the proposed person to be conserved an ability to talk? I just don't know how we got there.

HON. ROBERT KILLIAN: I have to take exception to your underlying assumption. We do give people an opportunity to talk. The Probate Court and the Probate system is the only court in Connecticut where people are virtually guaranteed their right to talk.

A third of my hearings are held someplace other than the courtroom to insure the presence of the respondent. Hospital beds, convalescent homes, living rooms of their house, community rooms in senior centers. This is the stuff of our type of work.

We're a down and dirty court. We go where our people are and we listen to them. I just cannot accept your assessment. Do we make mistakes? You bet.

REP. HAMM: Sir--

HON. ROBERT KILLIAN: If I make it to 11:00 in the morning without making a mistake, that's a good day.

REP. HAMM: So in your testimony, then, what Miss Desautell is describing was just an aberration.

HON. ROBERT KILLIAN: Miss Desautell is a remarkable aberration.

REP. HAMM: Okay.

HON. ROBERT KILLIAN: And the system didn't respond, perhaps, as generously to her as it should have given her remarkable ability to overcome infirmity. Most people, I can't imagine, I wake up mornings with a stiff shoulder and I'm a basket case.

She is an inspiration and I admire her. But we handle 4,200 of these matters a year. There were, last year, I think six appeals in conservatorship matters.

Some of that is because people lack the resource to appeal, perhaps. But most of it is because people willingly seek or happily, readily accept, at least, the service that's put in place for them.

I want you to know one other thing. We work mightily hard to keep people in the community. You know, I could sit here and recite for you what's available to keep people in the

community in Hartford, including the dollars that they can get from Medicaid to stay in the community.

But I can just summarize it and say that if someone needs 24/7 supervision, then they can get about 16 hours a week out of the state resources.

The irony is, Representative Hamm, and I know you're not primarily a financial committee, we will pay $7,000 a year to put somebody in a nursing home--

REP. HAMM: I know.

HON. ROBERT KILLIAN: --but we're capped at under $2,000 to keep them in the community, where they want to be, where they will be happier, and where all of us can reap a taxpayer bonanza if we can keep them there. That doesn't make sense. It's something that fundamentally government has to address.

And it's something I have to deal with. I know that I see people placed in nursing homes by conservators that I appoint, that but for economic limitations could be maintained in the community. I know that.

I suspect that a third of the people in those convalescent homes don't have to be there. Maybe more, if there was some less restrictive alternative.

And, honestly, we work hard at trying to keep people in the community. And the days when I

go home feeling good about my job are the days when we've had some limited successes in achieving that purpose and made somebody feel better.

REP. HAMM: I guess the only thing I want to leave you with, certainly from me, is let's assume that we pass this legislation and a reform goes forward. I hope that we're going to have some mechanism to judge its success before we see another headline.

I would have hoped that there had been some kind of measurement or accountability built into the bill so that we know the judges are being trained, so that there is some movement on the culture. So that we, as Legislators, have some sense that we're not just changing the law, that we're changing the system.

HON. ROBERT KILLIAN: I think there is.

REP. HAMM: Okay.

HON. ROBERT KILLIAN: I think it's the provision in our recommendation that codifies the habeas corpus right for individuals. Appeals are a very unwieldy way to reverse an order of a court like ours.

We make a decision and changes can occur very quickly in that person's life. And appeals can take months if not years.

And what Tom and Royal and I agree with it, and other members of the committee want to make sure is that everybody understands that

historically, when somebody is institutionalized, be it in a jail or mental hospital or a convalescent home, they have a right to seek a habeas corpus appeal, a habeas corpus petition. It is handled in days, not months.

And it is an opportunity for people to challenge the judgment of somebody like me who, on any given day, can flip that coin and come up the wrong side of the coin.

REP. HAMM: Okay. We'll go down the road with you.

PROF. ROYAL STARK: May I respond real quickly?

SEN. MCDONALD: Very briefly.

PROF. ROYAL STARK: I fear that I may have, like, kicked over a hornet's nest by using the phrase culture in the Probate Court.

But one of the things that I just want to stress is that some of the things that we have in this bill go to changing the culture of informality which has led to some of the problems.

Like requiring that people be sworn in when they give testimony at a conservatorship hearing, requiring that the rules of evidence be employed, so that clear and convincing evidence actually mean something in the practice, not just in the theory that's laid out in the statutes.

And the final thing is, is that I am struck by the fact that the brochure put out by the Office of the Probate Court Administrator, under the section of How do Conservatorships end, has the first sentence that says they usually end when the person dies.

I'd like to change that culture so that people can get out from underneath a conservatorship long before they die, even if they're at a very advanced stage.

SEN. MCDONALD: Thank you. Are there other questions from Members of the Committee? If not, thank you very much, gentlemen. Judge Secola, followed by John Hubbard.

HON. JAMES SECOLA: Good afternoon. I'm Judge Secola from the Brookfield Probate Court. I'm also appearing as the President of the Association of Judges. SB 1454, 1437

Our numbers sort of fluctuate between the low 30s and mid-30s, of judges. It's called the Connecticut Probate Judges Association for Local Courts. And we're committed to preserve the local court features of our Probate System.

I'm not going to add to the comments of Judge Purnell regarding Senate Bill 1272, except to say that our association is in complete agreement with that. We think it's a bad bill and should die.

We're talking about conservatorships and I had seen a bill on the list, Senate Bill 1453, which allowed somebody to basically forum shop

I mean, I think it's a theoretical problem but in practice, given what we have to deal with on a day-to-day basis, it's really not an issue.

REP. FOX: Okay. Any other questions from Members of the Committee? Hearing none, thank you, Your Honor.

HON. JAMES SECOLA: Thank you.

REP. FOX: Next we have John Hubbard followed by Marilyn Denny. Good afternoon.

JOHN HUBBARD: Thank you for having the hearing today. My written testimony is on Senate Bill 1439, so if you go the screen for Senate Bill 1439 on the right-hand side in the middle of the page, you should find my testimony.

Most of my remarks, a lot of it will not be what's written. I guess I'm only an expert on one thing, and that's the obstacles I faced trying to help a friend.

I would much rather have you challenge what I say, or accept what I say, then just ignoring it. I am in favor of Senate Bill 1439 and Senate Bill 1453 and opposed to House Bill 5675.

A friend of mine wound up being homeless and he needed his medication regulated, and he was put in a facility on a 15-day certificate. And we ran into a lot of problems.

What my friend needs includes the right to have access to his home Probate Court. Right now,

when you're in a facility, you have no right to access your home Probate Court, only the Probate Court where the facility is.

The right to choose your own conservator, that should be a near absolute right. Right now there is no right to choose your conservator. You should have a right to the full spectrum of medical services, not just the ones that the hospital likes.

The hospital facility did not diagnose a problem, could not diagnose a problem, continued to not diagnose a problem. I suggested that they send him to a new nutritionist. The hospital declined.

The problem was still continuing when the person was before the end review before the Probate Judge, and we asked the Probate Judge to order them to see a nutritionist since they had no idea what was wrong, could not diagnose the problem. And the judge refused to order it.

I think that's a very important right for a person. Senate Bill 1439, having a person only be provided with what he cannot do for himself or provided by friends or neighbors or anyone else in the community other than the conservator is wonderful.

And the lawyers that represent the clients in court, the more they know about patient advocacy and not just a general law degree and current, I think that's very important myself.

At this point, having spent three years beating my head against the wall, I really want to say, this is important to do now. I mean, fixing the problem now would mean this won't happen to someone else.

I consider the people who are in a facility in Connecticut to be very similar to the people under Dred Scott's court case. Anybody remember Dred Scott? The term slavery, by giving people their rights outlined, you can be Brown v. Board of Education, the Civil Rights Act of '64-'65.

You can be the Emancipation Proclamation to the people in institutions in Connecticut. And I don't believe I'm overstating. I'd love to challenge me and say, oh that's an exaggeration. I do not believe it to be.

REP. FOX: Thank you. Any questions from Members of the Committee? Thank you for your testimony.

JOHN HUBBARD: Yeah.

REP. FOX: Next is Marilyn Denny followed by Judge Yamin. Good afternoon.

MARILYN DENNY: Good afternoon, Representative Lawlor, Senator McDonald and Members of the Judiciary Committee. My name is Marilyn Denny. I am a staff attorney at Greater Hartford Legal Aid. I have been in legal services helping the elderly for almost 20 years now.

SB1439
SB1453

Initially I worked very hard, for a long time, and continue to work on helping the State of Connecticut come into conformity with changes in federal nursing home law.

And am equally excited now as I anticipate being able to testify in support of Senate Bill 1453 and Senate Bill 1439 as substituted to help Connecticut come into conformity with national standards.

I've submitted written testimony and will not read it, but would try to address my comments to questions that have been raised. The first thing is to really to try to be very clear as to why we are all testifying to a substituted bill, which was only very recently circulated.

I was privileged to be one of the attorneys who worked with attorneys from the Elder Law Section and the Probate and Estate Section of the bar on trying to redraft Connecticut's conservator statutes. People worked very hard. It was very productive because they people from all practices.

And the bill that was initially submitted to the Judiciary was where we were at that moment in time. What's called the Killian Committee, and I think rightly so given the dignity of Judge Killian's testimony, was forming and beginning at that time.

And they were kind enough to sort of adopt the bill that we submitted, or a version of that, as their beginning working draft. And then they worked very hard, and I think very

successfully, on changing it much to the better. Which is why we are all testifying, you know, in favor of the substituted bill.

I'm also going to acknowledge, because one of my esteemed colleagues, Deb Tedford, is here to say that it still needs a little tweaking. And we may agree so we hope that it will be J.F. favorably and continue to be worked on.

I'd like to use my remaining minute, perhaps, to try to address a question that was raised by Representative Hamm about culture change. I think it's a very good question. I think, without the change in the law, culture change will never happen. And I think Attorney Stark talked about that.

But, for example, changing the definition of what it takes to be deemed to be incapable is very important because, while the medical piece of it remains, we refocus doctors on a person's functioning.

On what they can do, so that a diagnosis of dementia or something does not steer you automatically into getting a conservator.

But we're also committed, and we know the Probate Court system is, to working on changing the medical affidavit. Dr. Henry Morgan, who is a very noted psychiatrist, has said the current affidavit is totally irrelevant to republishing guidelines for attorneys practicing before the court and enforcing them. There are very good guidelines in place which have to be worked on and enforced.

To prepare instructions for conservators. We have spoken as a group with both Judge Yamin and Judge Lawlor for the Probate Administration and Assembly are working on those.

To compile resources for all the Probate Courts. We will serve as lawyers and others will work on making sure that the other courts have the same degree of specified knowledge that judges such as Judge Killian have about what is available to keep people in place.

And, finally, if Judge Killian complemented me with the thought of, amongst others, when he sees me coming, God what's happening. I have always heard him and seen him listen to clients to proposed wards.

But I have been in courts where the practice is to appoint a court-appointed attorney, serve the attorney and not honor or speak to the ward. Thank you.

REP. FOX: Thank you, and you got it in just in time there. Any questions from Members of the Committee? Representative Aman?

REP. AMAN: Yes. June Cottle, who I know very well and works in your office, contacted me about your testimony. And, among other things, she told me to listen very carefully.

But I think the thing that came through to me from her more than anything else was that I would be hearing a lot of legal things, I'd be

hearing a lot of other discussion between the attorneys.

And what got to me was when she said, they're talking about the legal parts of it. I'm the one that has to answer the phone and actually talk to the people that are having a major problem.

So thank you for coming forward, and you can tell June she had a big impact on how I'm going to vote.

MARILYN DENNY: She has a big impact on all of us. We're lost without her. Thank you.

REP. FOX: Thank you. Any other questions? Thank you very much for your testimony. Next, Judge Yamin followed by Janet Auster. Good afternoon.

HON. DIANNE YAMIN: Good afternoon, Representative Fox and honorable Members of the Judiciary Committee. Thank you for the opportunity to speak today. I'm Judge Dianne Yamin. I'm the President Judge of the Connecticut Probate Assembly.

HB 7382
SB 1272
SB 1453
SB 1439

I am here today testifying on behalf of the Connecticut Probate Assembly regarding various probate bills. I've also submitted written testimony.

First, regarding Senate Bill 1437, which is act concerning the date of birth of adopted persons born outside this country, the Assembly supports this bill. We should allow a judge to

promulgate regulation with the assistance of its Executive Committee.

All judges, with few exceptions, all voted in favor of the courts being open 20 hours per week over five days, except when City Halls are closed. However, as I said before, there is no consensus of all the judges on the requirement of a clerk present all 20 hours.

There does appear to be consensus on the towns providing the technical assistance, which is Section 1 of the bill. And Connecticut General Statute 45a-h is the Court Facilities Statutes, which requires the towns to provide court facilities.

Lastly, regarding the act concerning the transfer of an application of conservator to Superior Court, which is Senate Bill 1453, the Assembly opposes this bill as it maintains the Probate Courts are historically the best, most local, efficient jurisdictions for conservatorships.

And lastly, I understand in place of Senate Bill 1439, which is the act concerning conservators and probate appeals, Judge Killian's committee has developed compromise language with legal rights advocates, which he is proposing. This is the Probate Administration's Conservator Statutes Revision Committee, a la Killian Committee.

This is a step in the positive, right direction. However, the Assembly has not had an opportunity to vote on it or review it

fully, and so we take no formal position on it at this time.

However, I will be actively seeking the input of all 117 judges, because I'm fully in favor and the Assembly is fully in favor of any improvements that we can do to our system.

So we look forward to working the Judge Killian's committee on that language. Thank you. Any questions?

SB1272

REP. FOX: Are there any questions from Members of the Committee? Actually, I have one. The educational requirement, I just want to make sure, I realize everybody said that they've agreed to it, essentially. But what is the amount of educational requirement that they're agreeing to? Is that all--

HON. DIANNE YAMIN: It was originally 15 hours, of which five had to be in person. And now, for all judges, it's 15 hours. All 15 must be in person. In addition, there's a rigorous 40 hours of training for new judges that actually was put in place already this year.

And this would be to use the regulations that we have proposed through the Working Group and with the assistance of the Administrator's office and Judge Bonnie Bennet from that office, have done a tremendous job in getting this education in place.

It's our intent, through the Regulation Subcommittee of the Executive Committee, to put these regulations regarding education into full

force as regulations of the Administrator's office.

REP. FOX: And do these educational hours require any specific topic, or can it just be probate-related?

HON. DIANNE YAMIN: For the new judges, there is a variety of topics which are required, regarding civil law, evidence, etc. And for the active judges, it's a broad variety of probate topics.

REP. FOX: And that's an area, because I recognize that you, the Assembly, doesn't always have consensus. But that is an area where you feel there is consensus?

HON. DIANNE YAMIN: Absolutely.

REP. FOX: Okay. Thank you.

HON. DIANNE YAMIN: Thank you.

REP. FOX: Representative Hamm?

REP. HAMM: Your honor, I just wanted to say how nice it was to see you again.

HON. DIANNE YAMIN: Thank you. You too.

REP. HAMM: I do have a comment. I don't know if it's a question of not. Senate Bill 1439, it seems to me to be probably the most important probate bill before us this session.

And yet I assume, because of timing and other reasons, the Assembly has not yet been able to

review it since the proposed substitute language has happened.

How can you do that? Because I'm feeling that the input of the Assembly is pretty important on a topic such as reforming our entire conservator language.

HON. DIANNE YAMIN: That bill was faxed to me on Monday evening this week, and it's my understanding that it was sent out to all the courts on Tuesday, and they're just receiving them.

It's my intent to fax a letter to all 117 judges over the next day or so which will ask them to respond to me by fax, email judgedianna@aol.com. And I would like to get as much input within a very short period of time, and then report that back within days to Judge Killian.

REP. HAMM: So you will report it to us?

HON. DIANNE YAMIN: Absolutely.

REP. HAMM: Okay. Because I think that's important.

HON. DIANNE YAMIN: Yes.

REP. FOX: Thank you. Any other questions from Members of the Committee? Okay. Thank you, Dianne.

HON. DIANNE YAMIN: Thank you very much.

REP. FOX: Next is Janet Awster.

No one is incapable of caring and having hope and doing wonderful things for themselves and others. I feel that 30 days is too long for a PEC to last. Please [Gap in testimony. Changing from Tape 2A to Tape 2B.]

--thank you.

REP. FOX: Thank you. Are there any questions? Okay. Hearing none, thank you very much for being here this afternoon.

JANET AUSTER: Thank you.

REP. FOX: Next is Laurie Julian. Good afternoon, Laurie.

LAURIE JULIAN: Representative Fox and Members of the Committee, my name is Laurie Julian. I speak on behalf of my mother, Carolyn Crown, who was involuntarily conserved.

If we had in place the protections of Senate Bill 1439, my mother's right to make major life decisions would not have been violated and the family would not have gone through agonizing years of dealing with the Probate Court System that benefits courts appointees while depleting bank accounts that the elderly have worked hard all their lives to save.

This is why we ask that not another session go by without passing this important piece of legislation.

My mother worked 17 years at the Traveler's Insurance, retired with a pension, and lives in

West Hartford in the condominium she has made home for over 27 years.

Despite my mother's estate planning, advanced directives, and designating me, her only daughter, as her durable power of attorney and health care agent, the Probate Court in its unfettered discretion ignored her wishes and appointed a non-family member as her conservator of the person.

With the stroke of a pen, the judge stripped her of her rights to make medical decisions and where to live, among other liberty rights.

The system failed my mother when it appointed her conservator of the person. She finally resigned, but only after costly proceedings to remove her, because within four months of her appointment, she wanted to wrench my mother from her home and place her in a nursing facility.

There were also numerous complaints to the judge of this conservator taking my mother's financial documents and prescribed medication out of the house, and other transgressions, including a volatile personality, verbally abusive behavior toward home aides, family members, and even wards.

Not to say that my mother was not in need of some assistance, but the protections afforded under this bill would go a long way to protect the interest of the frail and elderly that deserve heightened protection.

As it stands now, conservators can file for appointments in 117 different towns, and are, simply put, an unregulated industry. There is no central location to collect information regarding previous complaints or qualifications.

Unfortunately, there are similar stories occurring throughout the state, and therefore a central registry to report abuses is direly needed.

As seen, the powers given to conservators of the person are broad and should be carefully considered, since they are entrusted to protect to most vulnerable in our society.

When they abuse this power, there should be some mechanism to report transgressions apart from, or in addition, to a partial judge that appointed the person.

Most importantly, this bill preserves the preferences of the ward and requires clear and convincing evidence to such person form serving.

Currently, Probate Judges have broad discretion for the selection of conservators. These are often patronage appointments which can also lead to conflicts of interest, since many judges are part-time and appoint those who practice before them and contribute to their elections.

This bill will go a long way in revising the standards for appointing conservators by

requiring the least restrictive forms of intervention to assist the respondent in caring and managing his own affairs.

Moreover, this bill provides oversight and accountability of the Probate Courts by requiring recorded hearings and findings by clear and convincing evidence.

In closing, I thank the Committee's introduction of this bill. I would also suggest and intermediate process other than costly appeals to the Superior Court. Appeals to the Superior Court are a deterrent for estates that have gone through the probate system.

Instead, an appeal mechanism to an impartial, three-judge panel would provide an efficient review process. Thank you very much for the opportunity to testify.

REP. FOX: Thank you. Representative O'Brien?

REP. O'BRIEN: Thank you. Just a question. When the judge made the decision, or prior to the judge making the decision to appoint a conservator, did the judge meet with your mother?

LAURIE JULIAN: No. I'm the conservator of the estate and then he appointed a conservator of the person. No, he did not meet with my mother beforehand, before having her conserved.

And this was even in contradiction, or I shouldn't say contradiction, but the court-

appointed attorney had, in her report, said that she should not have been conserved.

So we don't really know what the basis of the judge's decision was even, because it was very conclusive. And that is a further reason why this bill would go a long in requiring findings of fact and not just mere conclusion statement.

REP. O'BRIEN: So there was no record as to why it was that, were you applying before the court to be the conservator of person?

LAURIE JULIAN: We did, again, put forth the documentation of my mother's wishes, the pre-executed estate planning. I really don't know what more she could have done to prepare for this type of incident.

REP. O'BRIEN: And the judge overruled her decision as well as, you're her next of kin?

LAURIE JULIAN: Yes, I am.

REP. O'BRIEN: And so just went against those wishes and appointed somebody else?

LAURIE JULIAN: Right. I think they have broad discretion in the statutes on really, basically, unlimited discretion to a point.

I think, again, this bill would require them to look at first the wishes and then, you know, that person was disqualified for some reason. But he did not even have to explain that.

REP. O'BRIEN: Right. Thank you.

LAURIE JULIAN: Thank you.

REP. FOX: Thank you. Are there any other questions? Thank you for your testimony.

LAURIE JULIAN: Thank you.

REP. FOX: Next is Judge Diane Blick, followed by Michael Dunay. Good afternoon.

HON. DIANE BLICK: Good afternoon. As a recently elected Judge of Probate, I may be new to the judgeship, but I am not new to the system or the work and service performed by the Probate Court. SB1272

As a Probate Paralegal for over 30 years, a former Clerk of the Probate Court, and now a Judge, I bring a unique perspective. It is extremely important to a community to have a judge and court that are accessible when needed.

Our court also welcomed the Town of Kent into our district several months ago. So I also bring the experience of accomplishing a smooth transition of consolidation.

The growing needs of the more senior members of our community, as well as the ever-growing needs of our children, make it vital to have a court be easily accessible, even on a moment's notice.

words of the late, great [Gap in testimony. Changing from Tape 2B to Tape 3A.]

REP. LAWLOR: Well, thank you very much. And sorry about the comings and goings on the Committee. It's kind of a crazy day here and other committees in here as well. So I apologize for that.

SUSAN ARANOFF: That's okay.

REP. LAWLOR: Are there any questions? Thanks very much.

SUSAN ARANOFF: Thank you.

REP. LAWLOR: Next is Deborah Tedford.

DEBORAH TEDFORD: Good afternoon. Thank you for your patience. I'll try to be brief and you can ask any questions that you want.

SB1272
SB1439

Senator McDonald, Representative Lawlor, distinguished Members of the Judiciary Committee, I'm here testifying. I have testified in the past on behalf of the Connecticut Bar Association.

Today, I'm simply testifying on my own behalf because some bills we could not get the sufficient time to review or comment on them. You're probably familiar with me. I've testified about the Probate Courts before.

I'd like to say a few words in favor of some provisions of Raised Senate Bill 1272,

but many cases don't come before them, sometimes for those reasons.

In general, I'm here more to talk about the conservatorship bill. But I do think there are some good provisions in Senate Bill 1272 that I would commend that you look at.

In terms of the conservatorships, you've heard an enormous amount about them. I'm the only attorney here today in private practice who is in the Probate Courts on a regular basis, and who has done conservatorships both from the standpoint of asking that someone be declared legally incapable, and representing the person, the respondent we call them, in defending those kinds of actions.

There's a great deal of truth in what the legal services and legal rights advocates have to say. The system does not work as well as it should.

And I think there are many provisions in Raised Senate Bill 1439, the substitute bill currently Killian #8, which we got the email of, I think, a day or two ago. And I've read Killian 7 and I've read Killian 8, and I think they keep getting closer and closer. They keep making good progress.

That's certainly preferable to the original bill that hadn't been fully thought through. And I strongly support the important provisions of that bill.

We do have some areas that we have found that need a little bit more administrative work. There are some contradictory provisions, etc.

I've been assured by Marilyn Denny and, I don't know if Judge Killian is still here, probably not. Oh, well. I'm sure that he will want to continue to work those out. But I think that it would be wrong for the Legislature.

These issues have come up over and over, and I would hope this year, as a long session year, that you would take some time to look at the matters of the Probate Courts, particularly those issues that have to do with due process.

With the recording of hearings, normally what goes on in the Probate Court, as you've heard, people say, well, what happened? And, unfortunately, we can't tell people what happened because there is no record of what happened.

Sometimes the judge is absolutely correct, and I think having these kinds of important hearings on the record would allow people to say, this is what happened, this is what the people said. It would provide some accountability.

I think the system of the appeals in the Killian bill also makes sense. And, for the first time, we'd have the Superior Court looking at what takes place in the Probate Courts, which has never happened before. Because they can't. Because there's no record of what goes on there in those proceedings.

I think the provisions that require that the rules of evidence be applied, which is existing law. And, in my, we'll just say over 25 years of practice, I can't ever remember seeing the rules of evidence applied. Or, if they were applied, it was in such a way that you would not recognize it as the rules of evidence.

So I think it would start to change, as some people have referred, the culture of the Probate Courts. As others would say, just improve the level of practice in those courts that are already following what should be the best practices.

And I really would urge you to take a strong look at the provision of Senate Bill 1439, particularly those that I mentioned.

As I said, there are some areas where we found some inconsistencies or some things that I think are unworkable. I believe we can work in concert with those who have been on that committee.

I was part of the original drafting group that Marilyn Denny and others referred to, Tom Behrendt and Royal Stark. So I know that we're all on the same page.

Finally, I would like to say that if you have any questions for anyone who practices regularly in the Connecticut Probate Courts, I would be happy to entertain them.

REP. LAWLOR: Well, thank you very much, Attorney Tedford. Are there actually questions? Senator McDonald?

SEN. MCDONALD: Thank you, Mr. Chairman, and thank you for being here Deborah. You talked about the recording in Probate Courts.

Do you have any idea what the cost of making sure that that type of system, probably comparable to a court monitor system in the Superior Court? Do you have any idea how much that would take out to roll out among all of the probate districts?

DEBORAH TEDFORD: Well, first I'd like to suggest that it could be done at a level different from what is done in the Superior Court, but still an effective level.

A colleague of mine is a judge for one of the Tribal Courts, the Mashantucket Pequots Court, and he does the Probate, among other matters. All of their hearings are on the record.

And they use a simple, not terribly expensive tape recording system that keeps a record of what goes on the court. If there is an appeal, then they simply have someone transcribe it. But one does not need to have a court reporter to produce a record.

For example, in the Administrative Law area, when I do fair hearings, which I have occasionally done regarding Medicaid or other matters, or when you do zoning appeals. Again, there's not a court reporter at any of those

proceedings. Instead, there is a tape that's made and preserved.

And if an appeal is made or taken from the case, then someone transcribes the record at that point.

But that works fine for our zoning matters, which are heard not de novo in the Superior Court when you have an appeal of the zoning matter, we do that for administrative fair hearings under the Administrative Procedures Act.

And I think that that would be a simple and effective and relatively economical way to begin to have Probate Court matters, at least those disputed and contested ones, that are so important. Like conservatorships, termination of parental rights, etc., finally has some record of what took place at the proceedings.

SEN. MCDONALD: Well, thank you. I'm just trying to think. Court monitors in the Superior Court are part of a collective bargaining unit, I believe. I'm just trying to figure out if you could actually do that without [inaudible]--

DEBORAH TEDFORD: You don't need a monitor. You just would the Clerk start the recording machine.

SEN. MCDONALD: Okay. I'm just not certain, well, okay.

DEBORAH TEDFORD: I mean, it works in administrative hearings. It works in these others things.

SEN. MCDONALD: Different issue for a different committee.

DEBORAH TEDFORD: Right. Yeah. I guess that's one of the things that people can work on. And that's one of the reasons that I think there are some important provisions in Senate Bill 1272, because that authorizes the Probate Court Administrator to begin looking into how one would do that type of thing.

SEN. MCDONALD: Okay.

DEBORAH TEDFORD: And I just am giving you the suggestions of three systems where I know it works on a relatively inexpensive but effective manner.

SEN. MCDONALD: Thank you very much.

REP. LAWLOR: Are there other questions? If not, thanks again.

DEBORAH TEDFORD: Thank you.

REP. LAWLOR: Next is Judge Pearl. Judge Pearl will be followed by, is Barbara Frazier still here? Okay. And then after Barbara will be Virginia Gerena.

SB1272
(SB 1439)
(SB 1453)

HON. DEBORAH PEARL: Good afternoon, Senator McDonald, Representative Lawlor and distinguished Members of the Judiciary Committee. I'm Judge Deborah Pearl from the Essex Probate Court. I've been Judge there for 27 years.

I want to say how very proud I am of being a Member of the Probate Assembly and how most especially proud I am of our President, Dianne Yamin, who I think has worked very hard this year to bring the Assembly together.

And I think for the first time in a long time, most of us are completely on par with recommendations of an ad hoc committee that I am a member of and 30 other judges plus are members of.

And we were responding to the Program Review and Legislative Committee that made some final recommendations, and we were listening. And we want to listen and we want to work with you.

And through Judge Yamin and the Committee we've come up some wonderful recommendations and a plan, I think, for reform that will work.

And it was very hard to come by. People here today, you heard a lot about working 20 hours a week. Having all courts open 20 hours a week. That wasn't easy to get to.

I was not an advocate of that in the beginning, but as we talked about the issues, I saw how important that was. And I'm on board with it.

And so are many other judges. We understand the importance of that. We don't agree, though, that a Clerk has to be present. It would be an undue burden on a lot of the smaller courts who couldn't really afford to have that Clerk there.

And we asked him for some specific examples. He did give us a few, and we do agree that there should be some mechanism to help him get these judges to comply.

However, setting up a panel simply just isn't going to work because we've already got something already in place that we could possibly utilize.

And right now our committee is working with the Executive Director of the Council of Probate Judicial Conduct to explore utilizing the council for this exact purpose, of pursuing offending judges.

And we haven't finished our work yet. We'd like to pursue that further. We think that there's a possibility that that could be utilized. I don't want to take up any more time. I know there's other people that want to speak. So you have my testimony.

On the conservator bill, let me just say I was happy today to see Judge Killian's committee's bill. I hadn't seen it before today. I totally agree with what I've seen so far. I did have some conversation with members of his committee and with Judge Killian. (SB1439) (SB1453)

I think it's great what they've done. I'm totally on board with it. And I hope that we get more time to study that and I think that that bill looks very good.

REP. LAWLOR: Well, thanks very much, Judge. And I certainly concur with your comments about Judge Yamin. She has done a remarkable job over the past year.

There's been many accomplishments to show for it in addition to the ones you mentioned. So, I appreciate you bringing that to our attention. Are there other questions? If not, thank you, Judge.

HON. DEBORAH PEARL: Thank you.

REP. LAWLOR: Barbara Frazier? Is Judge Brunnock still here?

HON. THOMAS BRUNNOCK: Yes.

REP. LAWLOR: Okay. And is Dee King still here? Okay. How about Veronica Halpine? Okay. And Tom Behrendt has already gone, right? Phil Falcone? Judge Hall? Okay.

HB5675

BARBARA FRAZIER: Hello. My name is Barbara Frazier. Excuse me, my voice is a little hoarse. I'm losing it. In my voice, that is, not my mind.

I have been having many sleepless nights and my psychiatrist refuses to order a sleeping pill for what reason I do not know. But he did give me some Ativan, which I have been taking.

Let's see. Where do I start? It's been a nightmare. I'm the next girl in the wheelchair in Manchester to get committed on a Probate. And I realized that when she was talking,

rights of individuals with psychiatric disabilities.

Two extra weeks would seriously disrupt one's daily life and one's recovery. Thank you very much for your attention.

REP. LAWLOR: Thank you very much for coming up and sharing that with us today.

VIRGINIA GERENA: Thank you.

REP. LAWLOR: Are there any questions? Judge Brunnock?

HON. THOMAS BRUNNOCK: Representative Lawlor and Members of the Judiciary Committee, I thank you for your patience for putting in a long day. I'll try and keep my comments brief by trying not to repeat what prior speakers have spoken about. (SB 1439)

I'd like to first address Senate Bill 1272, and I don't think I have to remind the Committee that the probate system faces a financial crisis. And so it's a little disconcerting for myself that we can't even agree on a uniformity in our own procedures.

So I'll elide my comments and ditto the comments of those speakers that have spoken in favor of Senate Bill 1272. But since there's been a lot of times directed at conservators, I'd like to mention this concept about Clerks that are at the court for the full time that the courts are open.

Conservators, by their very nature, are contested matters, because someone is applying to remove somebody's rights.

And to have a judge, because there's no Clerk available, or no Clerk that's assigned for those particular office hours, court hours, handling those applications when they come in the door, is by its very nature ex parte communication.

I'm not saying the judge is necessarily doing anything wrong. But the judge is having a conversation with the applicant. And that, by its very nature, is ex parte communication. So I think it's paramount that if the courts are going to open for 20 hours, there's got to be a Clerk on duty for 20 hours.

I'd next like to direct my comments to, I guess, the euphemism for this afternoon is Judge Bob Killian's committee. And I'd like to associate my comments with those folks who have spoken in favor of that revised language.

There's no bill that's perfect. There's no bill that, as being a former member of the Legislature, long before anybody's time here, but I know there's no bill that's perfect.

But it certainly addresses many of the issues that I think we all agree with. Whether or not you think there's a good culture or a bad culture, the language that's in that revised language addresses the issues that are most important.

What I'd like to direct my comments to, and I don't want anything I say here this afternoon to sound defensive. And nothing I say here this afternoon has anything to do with any particular case that I have. I want to put that perfectly clear on the record.

Judge Killian stated in his testimony that the (SB 1439) services throughout the State of Connecticut are different. And so let me just briefly tell you about how the services within the Probate Courts are different. And they're different because of funding.

My predecessor, Jim Lawlor, who's now the Administrator, started a project called the Melissa Project. And the goal of that project was to help folks that have been diagnosed as psychiatrically disabled to keep them from the rotating door going through courts and back into the hospital.

How that program works is that these folks are conserved. They're put back into the community. We have a nonprofit group that works with the conservator that tries to keep these folks compliant, deals with social issues with them in the community, whether it's a landlord or a tenant or whatever the issues are.

At the end of the five-year period, comparing the same people, now, in Waterbury we have 30 folks. In Danbury we have about 17. In Torrington we have 10. Trying to start it in the kingdom of Jack Keyes down in New Haven.

We have reduced the incarceration by over 50%. We have reduced the amount of hospitalizations by two-thirds. These are with the same people, now. Now, this costs money.

And this presentation was given at the training that Judge Killian referred to earlier, the two days intensive training and, of course, once the other judges heard that I had it, they all wanted to know how they could get it.

This was worked in conjunction between Judge Lawlor and Dr. Marcus at DMHAS, and they worked out to get the funding done for this. And one of the items that is criticized in Judge Lawlor's budget is the $170,000 that goes to the court to help set up this project, to fund the nonprofit. To fund the Social Workers that deal with these folks.

So that's what we do. If I could, I know I'm over my time, but Representative Hovey before asked, you know, procedurally. So, for 30 seconds, if you'll bear with me, procedurally, I'll speak for myself.

Where there are family members we, of course, do everything possible with family members. But many times there are many different issues that are involved. What the judges have before them many times, well, we always have doctors' reports.

We may have psychological reports from psychiatrists. We may have issues of misappropriation of moneys by family members, or allegations of that.

I've even had allegations of family incest, sexual abuse of the elderly. These are all things that we're confronting.

So if one was to look at the finishes product, and say how could Brunnock not do this or that, but there are things that are stated to us in these hearing that are not, obviously, for public consumption.

So the process isn't always an easy one. I would ask you not to evaluate the process by specific cases. Okay? Can we do a better job? I'll be the first one to say we can. And I'm going to call it Killian's Bill.

Killian's Bill helps us to do that. Because it sets out, in detail, of what the steps should be. And Senator McDonald raised some interesting issues, and we have to discuss those, about recording the proceedings. But not only that will keep the judges on their toes.

But when there's other matters in other courts and people decide to change their testimony, the recording of those events that happen in the Probate Court will be important. And that's why I'm in favor of it. I'll be happy to answer any questions that you might have. I know the hour is late.

REP. LAWLOR: Thank you, Judge. The program you were describing, that's Mike Mackniak's program?

HON. THOMAS BRUNNOCK: Mike Mackniak? Yes.

REP. LAWLOR: He's doing a great job. He's a great guy.

HON. THOMAS BRUNNOCK: It's seems very simple. All it takes is money to do it. But the interaction and what his folks have done, and they've won a national award with that.

REP. LAWLOR: They did. And the overlap of the criminal justice system and the mental health system is one that's overlooked here quite a bit. And I think blending those two is an important priority for all of us.

HON. THOMAS BRUNNOCK: Our goal is to put people back in the community. Not to put them in convalescent homes, believe me.

REP. LAWLOR: Thank you. Any other questions? If not, thank you, Judge.

HON. THOMAS BRUNNOCK: Thank you.

REP. LAWLOR: Dee King?

DEE KING: I'm Dee King. Actually, I'm in the same district as Judge Brunnock. And for the first time we agree on something, which is that I support Senate Bill 1439 and Senate Bill 1453.

I suffered a major nightmare in Probate, one that probably is outstanding amongst many. It was my father, who came from New York to visit me and ended up in a probate nightmare.

He was conserved by a woman, I'm probably not supposed to say but I find the actions were reprehensible. My father was put in a locked ward, a mentally competent man that had some small amount of dementia, locked up amongst people that were completely diminished.

Separated from family and friends. Constantly scrutinized at every step. Threats. He was not allowed to leave the facility if he did not take medication.

He had chemical restraints to the extreme where he was disoriented and falling over, which I had to witness, which was the most horrific thing, watching your own parent sit there and fall over in front of you.

You wonder at a point, what do you do? You're taught to be civilly obedient and then you say can this go on much longer? I felt like I was living in Nazi Germany, watching my father deteriorate in front of me.

Additionally, my father was forced to stay in a room with a man who hit him and threatened him and later we found out, he was involved in a double murder.

These are things that should not happen to an 86-year-old man in his twilight years. These are things that sound like a surreal novel, not something that anybody should have to endure.

My father was isolated and medicated. No person in this country should ever be isolated from a family member. We have a 14th amendment

that says to protect and preserve the integrity of the family. Why is that ignored? Why was it ignored?

My father's due process rights were ignored and he came here from another state and was taken away from me. Ripped away. And I just find that these things are probably more prevalent.

I've seen people in nursing homes now, and I feel that when my father was finally freed with a writ of habeas corpus by a wonderful Judge in Waterbury, Judge Gormley, who overrode the lower court, took my father home, he's completely traumatized.

And one thing we both said was, hopefully, that we can be an advocate for other people so that never happens to another human being. My father raised us in a way that we always believed in helping other people and loved other human beings.

And I can't even imagine at 86 years old giving up 10-1/2 months of your life and not even having the ability to go out, to conduct your life the way you want. By the way, my father is living by himself now, in New York.

When I was told that he was going to diminish, and I'm sure he would have had we left him where he was without a fight, I was very fortunate to have incredible attorneys come forth to help my father.

I'm looking for change. I'm looking for change in the system. I'm looking for people to start

saying, we can't just have cushy jobs of convenience.

We have to really scrutinize. I want checks and balances. I think that there should be an opportunity for people in a community to see what's going on, just like with Family Courts.

I think there should be recording. I feel that any time there's differences among family members, it's just like I'm sure one day you may have said you didn't like your wife. Oh, I'd like to kill that woman. You didn't. And you continue to love her and you continue to stay with her.

People have differences, and you have to look at the whole picture. Nobody is God and they can't sit here and evaluate everything. But there has to be a system that protects the people that it was made to protect.

Then, conservators, in my opinion, are not the answer. Family first. I've gone through this, and I guess that's probably pretty much my time. But I hope you will consider that we have to take back and give to the people what they deserve. Thank you for your time.

REP. LAWLOR: Thank you very much. Are there any questions? If not, thanks. Veronica Halpine?

VERONICA HALPINE: Good evening, Committee Members. And I'm glad to see my hard working Senator from the northwest corner. Would you mind giving me a ride home?

SB 1272, 1439
1453 HB 5675

I'm here to support Senate Bill 1272, Senate Bill 1439, and Senate Bill 1453 and to oppose House Bill 5675.

And I ask you to please look at the testimony of my client, Robert Scotti, in opposition to this bill, House Bill 5675, because his father was put in a psychiatric ward and, over the objection of the family, they wanted him to be put back in the medical part of the hospital, the doctors said there was no medical condition for which they could admit him. And he was dead two days later.

There's been some discussion today about three cases. Obviously we're not all here for three cases. There's a lot more cases and there'd be a lot more people here if they weren't so victimized and damaged by the experience of being in Probate.

We have this famous three cases courtesy of the *Hartford Courant* reporter who gets it and writes about it. He's written on three different outrageous cases. I've sent him a lot more outrageous cases. He just can't write about the same thing always.

I have attached to my testimony examples of documents that were submitted to Probate by court-appointed attorneys.

The first one is the PC-170 filed by Dan Gross's attorney, Dee King's father, who was a New York State resident with a New York license, New York bank account, who came to Connecticut temporarily.

He got a court-appointed attorney who said that he was intelligent, that he became emotional when he was speaking about his wife, that he knew what he wanted to do with his money.

And he vehemently opposed a conservatorship and this attorney checked the boxes to appoint a conservator of the person and estate.

There is a federal lawsuit now. The private bar, once a year, says to Legal Services, sue them, sue them, sue them. Bring a constitutional claim against them. Yale Law School Professors have told me, sue them, sue them, sue them.

Well, I was involved in drafting a federal complaint against the Governor of the State of Connecticut, Judge Lawlor, Judge Brunnock, and a variety of other people in connection with this Dan Gross case.

It's my understanding that the charges, or complaint against Judge Lawlor have been dropped and I wouldn't need to speculate. It's because he doesn't have any power and what could he have done anyway?

I call Judge Lawlor a couple of times a year, particularly when the Probate Judges say I can't the medical evidence for my client. They won't release the medical affidavit to me when I'm representing that person. And I have to call his office a couple of times a year to say, they're doing it again. Please. It happens all the time.

He helps me out. He can do that. That's because I think he's fairly certain that we'll sue. And he doesn't want to be there. Neither do I.

In fact, Greater Hartford Legal Aid is not supposed to be involved in these matters. I'd like to be out of this job. I'd like to go back to doing the stuff where people don't have representation.

But we got in and drawn in, I've been doing contested cases in this area for six years, because it's outrageous. If I could just quickly tell you what I have attached here and then I'll get out of your hair.

After the Dan Gross papers, and I left his name in there because I have his permission to show it to you, I have a Decree of Appointment of a Conservator for one of my clients who was recently conserved.

You'll notice there's no finding of incapacity. There isn't a word saying by clear and convincing evidence she is incapable.

He didn't find that she was incapable. In fact, this judge, Judge Purnell, would not allow the person to present medical evidence from a registered nurse who had done an assessment of all the services this lady had in her house to keep her home safely. Instead, without clear and convincing evidence, that decree shows that she was ordered into a nursing home.

When I got called to go and get that woman unconserved, I did it as fast as I could with an injunction. And you can see from the bill they charged that even during the 3-1/2 month period where she was conserved, that conservator charged double her income.

The next decree is another, one of the three cases that Judge Lawlor mentioned. This is one of the famous cases, because Rick Green wrote about it. This lady was conserved by agreement when there was no appropriate medical record. There was no appropriate medical evidence.

Her attorney agreed to conserve her even though there wasn't updated or appropriate medical evidence. That lady, obviously, didn't agree to conserve. We had five appeals going on that case before Judge Wagner basically told Judge Purnell he had to cut her loose.

The next document is, oh, this was a case where the nursing home applied to conserve my client because she was asking for too many cookies.

What I liked about it was that, on page two, it says that she's incapable of getting nutritious meals or getting protection from physical abuse or harm. She's in their nursing facility and they're checking the boxes for services they're supposed to have provided.

If she's not protected from physical abuse or harm, you should call the police. Needless to say we won on that one, and the judge was kind enough to say that he had never, ever in his

whole 25 years of serving been asked to file the $1,000 sanctions against the nursing home.

The final two papers are regarding Judge Killian, who gets a fair amount of trade from us because we're right in his neighborhood. I'd like to say he's very smart, a very kind person, and he does a lot of free work for Legal Services.

Nonetheless, if someone like Judge Killian has these systems in place and they're hurting people, then the system has to change.

The final Report of Representative PC-170, it's another attorney checking the boxes for this man to be conserved, even though it says, oh, I met with him.

He's cooking his meal and he doesn't want a conservator. In that case, in fact, the evidence presented was absolutely wrong. And no one bothered to pick up the phone and make two calls.

They had this allegation that the man had run through the halls with a machete, and had gotten off with the services of a public defender. None of it was true. Never any charges. Never any public defender.

All of that is, like, put into the record without anybody, including this attorney, with picking up the phone and making a simple call.

Now the final paper that I'm interested in is that when this man comes to get me, he's trying to get unconserved.

He gets a form letter from Judge Killian's office saying no can do until you cough up a doctor's report. No doctor's report is required in order to get a hearing. They were just going to blow this guy off.

He got railroaded, and then he gets blown off. I got a hearing without it. I got him unconserved without a medical record.

I have a whole file of PC-170's with attorneys just checking the box. This is more than just three cases. And I ask you to please do something about it.

REP. LAWLOR: Well, thank you very much. That's our goal this year, to make some progress on this.

VERONICA HALPINE: Thank you.

REP. LAWLOR: Next is Philip Falcone. And I think I asked earlier, Judge Hall is still here, right? And Ann, is it Foccachielle? Okay, you'll be next after Judge Hall.

And then last person to sign up is Laura DuBrava, I think it is. Is she still here? Before you begin, is there anyone else who plans on testifying today? If not, okay. Please go ahead, Sir.

PHILIP FALCONE: Good afternoon, everyone. My name is Philip Falcone and I am testifying against proposed House Bill 5675. SB 1439

I am a member of the Common Ground Clubhouse in East Hartford, Connecticut. Pretty soon I'll be moving to Manchester and receiving services at Genesis. So, it's brand new for me.

And I'm also a survivor of bipolar disorder type 2 and posttraumatic stress disorder and a documented learning disability.

When I have been hospitalized on a Physician Emergency Certificate, I have always been able to leave before the 15 days. Except for the last time I was hospitalized in the community at Hallbrook Behavior Health Care.

While there, I attempted to contact a known advocate from Advocacy Unlimited, and she explained the procedure that I would have to go through.

My doctor refused to allow me to sign in as a voluntary patient. And also, at that time, I was not allowed to attend any of the 12-step meetings that were off the unit because of being on a PEC.

And I said, well, you know, I'm dually diagnosed, you know. And they're like, sorry, you can't go the AA meetings. At that time I was about to be evicted from my apartment and needed to straighten out my living arrangements so after being released, I took care of those issues.

But regarding Senate Bill 1439, I did have a conservator at one time, of the estate, which was voluntary. And it was recommended for me to have that in order for me to be part of the Shelter Plus Care Program through Department of Mental Health.

And that conservator refused to pay a fine that I had gotten by being arrested for a Larceny 6 charge. And because she refused to pay it, I was incarcerated for a weekend.

And could not be released until either it was paid or a psychiatrist signed me out of the Mental Health Unit at Hartford Correctional. And that's what happened.

Also I am possibly getting a conservator now and will be asking my mother to do it, because I really, really do not trust anybody at this point in the system because that happened, you know. I'm on probation right now and I have some other issues going on and I'd rather have family be my conservator.

In my opinion, if these bills were to pass, people in recovery would not have a say in their treatment or could not take care of the things they need to in the community. Thank you.

REP. LAWLOR: Thank you very much. Are there questions? If not, thank for being so patient, Sir.

PHILIP FALCONE: No problem.

REP. LAWLOR: Oh, that's okay.

ANN FOLLACCHIO: I wish to speak in favor of Senate Bill 1439 to reform the Probate Court system. I'm one of five children of a mother who began to experience dementia about five years ago. My father passed away about 20 years ago.

I was my mother's healthcare agent and durable power of attorney for many years. I was her primary caregiver. When her health began to decline, I applied to be and was appointed her voluntary conservator.

When her dementia progressed, a family member who was also a convicted felon had her sign a statement saying that she didn't want a conservator. So therefore my conservatorship ended.

I applied to be involuntary conservator of person and estate. The judge spoke privately with my mom and confirmed her wishes. I was appointed only conservator of person and the judge appointed someone from his district to be conservator of the estate.

I was very naïve. I challenged the accounting of the conservator of the estate and my attorneys also challenged the behavior of the conservator.

The judge subsequently removed both of us and appointed a new conservator of person and estate, at a cost of about $25,000 a year.

After the new appointment, after the new conservator of person and estate took over, my mother did not receive appropriate medical care.

She has glaucoma, macular degeneration, and diabetes. She's gone for long periods of time without seeing an eye doctor. She has gone without podiatric and dental care.

I wrote letter after letter after letter to the conservator and I received no response. What I did receive was a notice to go to court by request of the conservator so that they could limit my visits with my mother to three times a month.

They fortunately succeeded. They said I was upsetting my mother with my visits to her. And I'm only now able to see her three times a month.

And when she asked me why she can't see me, I tell her it's because of the Probate Court system. The judge ruled this way. And her response to me is this is not a free country. Thanks for your time.

REP. LAWLOR: Thank you, Ma'am. Are there any questions? If not, thank you. Is there anyone else who would like to testify this evening? If not, thank you for your patience and we'll call the public hearing to a close.

[Whereupon, the hearing was adjourned.]

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY

PART18
5573-5886

2007

TESTIMONY

OF CONSTANCE J. VOGELL,

JUDGE OF PROBATE

DISTRICT OF WESTBROOK

Re: S.B. No. 1272

S.B. No. 1439

S.B. No. 1454

H.B. No. 7382

SB 1453

designed a plan to address education, voluntary consolidation, staff salaries (still under study), and will be addressing the remaining issue concerning the increased enforcement authority of the Probate Court Administrator. Instead of waiting for this work to be completed, Mr. Lawler chose to bring his own legislative package to the Assembly again, with no consultation with either the Ad Hoc Committee or any other committee of the Probate Assembly. When asked by various members of the Probate Assembly about the nature of the legislation he was presenting, he gave vague responses. Although last year the Program Review Committee asked that he cap his spending, Mr. Lawler charges ahead with increases in staff, projects, and various other operations.

By removing the requirement of compliance with Chapter 54 of the Administrative Procedures Act regarding the creation of regulations (Sec. 2 (b) (2) of this bill) he removes oversight by the General Assembly, thereby eliminating one of the most important activities of government: *checks and balances.* The Probate Administrator needs to be ***more accountable*** to the Probate Assembly, other branches of government, and the people of this state, not less accountable.

(2.) **S.B. No. 1439** (Raised)

I support this bill with the following exceptions:

1. Sec. 2. – Changing the notice time from 7 to 14 days places a huge burden on the clerks as well as the marshals who must serve papers to respondents. All involved parties need time to be sure all areas of administrative due process are observed.

2. With respect to C.G.S. Sec.17a-543 and Sec. 17a-543a which involve medication and psychiatric treatment, increasing the time between service and the hearing could have disastrous consequences. People need help quickly in these cases.

3. Sec. 4 of this bill could cause a disaster also. It is rare for a court to waive medical evidence but if a respondent needs help and refuses to see a doctor prior to the hearing, under this bill there will be no hearing and the respondent will be turned away. Further, this section adds "any interested party" to those who may request clarification of the findings of fact supporting an appointment of conservator under this section, thereby violating the respondent's right to privacy.

(3.) **S.B. No. 1453** (Raised)

Allowing for the transfer of an application for the appointment of a conservator to the superior court or other probate court encourages "court shopping" as well as favoritism by the Probate Administrator. This bill will disenfranchise the voters in the community from which the case is transferred.

(4.) **S.B. No. 1454** (Raised)

I strongly support this bill as the ceiling for a short estate has not changed in many years.

(5.) **H.B. 7382** (Raised)

I strongly support this bill as it will help relieve the financial stresses the probate system is experiencing.

Thank you for your consideration.

JUDICIARY COMMITTEE

March 30, 2007

Testimony of Janet D. Heussner In Support of:

S.B. No. 1272 (RAISED) AN ACT CONCERNING ADMINISTRATION OF THE COURTS OF PROBATE AND THE DUTIES OF THE PROBATE COURT ADMINISTRATOR

S.B. No. 1439 (RAISED) AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS and

S.B. No. 1453 (RAISED) AN ACT CONCERNING THE TRANSFER OF AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.

Senator McDonald, Representative Lawlor and members of the committee:

I am pleading with you to support Raised Bill Nos. 1272, 1439 and 1453 to create procedural protections for a court system that has the power to deprive individuals of all of their civil rights. The Connecticut Probate Courts are courts of no record, no evidentiary standards, no constitutional or procedural safeguards, and, in my experience, no oversight.

As a journalist for Time and Granada Television, I have navigated uncharted territory near the Somalia border, escaped bullets in the West Bank, survived filming in shark infested waters in the Tuamotos Islands, but I have never been in a situation so frightening and seemingly inescapable as the Connecticut probate system.

My mother, an 85-year-old widow with Alzheimer's, and I are victims of this process. My mother's former attorney filed an application to have her conserved. The probate court charged the $296 filing fee to my mother. The probate court then appointed a Guardian Ad Litem who promptly recommended himself for the job of conservator of her estate. The one-year of legal fees ($55,713) and three-year conservator fees ($58,500) presented to the Fairfield Probate Court amount to 64% of my mother's liquid assets ($177,000) at the time of the conservatorship application. The conservator paid himself $40,000 without court approval for "conserving" my mother's estate. The money that my parents had scrimped and saved has been depleted. Funds that could have been used to keep my mother at home longer have been exhausted.

My mother has no conservator of the person and, yet, the probate court issued an order ex parte prohibiting me from seeing my mother. The conservator of the estate has hired my mother's cleaning lady to care for her and allowed the cleaning lady to take my mother off to the cleaning lady's home in Florida, against medical advice. I am a New York

resident. The probate court has no authority to issue restraining orders against me and yet it does. These courts do what they please.

I appealed the probate court's decision to mortgage my mother's house and to auction off her personal property to pay for these exorbitant fiduciary fees. These orders were entered before the conservator had filed an inventory or accounting as required by law. The appeals were dismissed because the probate court put the wrong return date on the decree. They are now on appeal before the Connecticut Appellate Court, challenging the constitutionality of the probate appeal process. I am represented by Attorney Royal Stark of Quinnipiac Law School on these appeals.

I have written many letters to James Lawlor of the Office of the Probate Court Administrator but was told that they are powerless to do anything because they are only an administrative court. Powerless to address my motion to recuse Judge Daniel F. Caruso for good cause. Powerless to appoint a substitute judge. And powerless to intervene in an order that has prevented me from seeing my mother for more than 2 years.

Reform is long overdue. Please support raised bills 1272, 1439 and 1453.

Thank you very much.

Janet D. Heussner
455 West 23rd Street 16E
New York, N.Y. 10011

PROBATE COURT

District of Avon
60 West Main Street
Avon, CT 06001

CYNTHIA C. BECKER
Judge

Tel. 409-4348
Fax. 409-4368

March 29, 2007

To: Honorable Members of the Judiciary Committee (SB 1272) (SB 1439) (SB 1453) (SB 1454) (HB 7382)

Re: Public Hearing on 3/30/07, Room 2C, 1:00 pm
Subject Matter: Probate

Dear Honorable Members of the Judiciary Committee:

I wish to express to you my support of the testimony of the Honorable Joseph P. Secola, Brookfield Judge of Probate, regarding the proposed Probate legislation to be discussed at a public hearing on March 30, 2007.

Respectfully submitted,

Cynthia C. Becker

Cynthia C. Becker
Avon Judge of Probate

(SB 1272) (1453) (1439)

005590

Maydelle Trambarulo

Our family's nightmare began in August 2004. My parents, Ralph and Maydelle Trambarulo, had moved to Delaware to be near son Paul in 2003, after living in Red Bank, NJ for 47 years. Mom, now 76, suffers from Parkinson's disease and related dementia. Dad, aged 82, suffers from normal pressure hydrocephalus, and has difficulty walking and breathing.

After Mom broke her hip, our cousin Teresa Sirico reappeared after an absence of 8-10 years. Teresa is Dad's niece and is a real estate broker in New Haven, CT.

When Teresa proposed bringing Mom to Connecticut for treatment, we agreed, wanting the best medical care for our wife and mother. We trusted Teresa as a family member. Once in Connecticut, she told us Mom couldn't come back to Delaware.

In October 2004, we received notice that Teresa had been appointed Mom's Temporary Conservator by the Probate Court of Woodbridge CT. This was done "ex parte" (emergency), so we weren't notified until afterwards. We agreed to an independent conservator, envisioning a neutral party who would work with us. Three attorneys were then appointed, the conservator, Mom's attorney and the guardian ad litem (GAL). These total strangers advise the court on "what is best for Maydelle". Their view of us has been formed not through direct knowledge, but through (mis)information supplied by Teresa.

Judge Clifford Hoyle denied our motion disputing the Connecticut court's jurisdiction of the case, even though Mom has never been a Connecticut resident, never voted in Connecticut, has never had a Connecticut driver's license or paid taxes in Connecticut. Ralph, her husband of 50 years, and two daughters live in New Jersey. Judge Hoyle decided that it was in Mom's "best interests" that she stay in Connecticut . This effectively ends my parent's marriage of 51 years, as Dad cannot travel to Connecticut. We are appealing Judge Hoyle's decision in Superior Court. Our family (Dad, myself and my siblings, Alice, Margaret and Paul), is united in wanting Mom to return to New Jersey to be near us in her final years.

Dad had to obtain a mortgage (at age 80!) because he was denied access to funds in joint accounts. In a proposed division of the estate, Judge Hoyle stated that he was being "generous" in allowing Dad 50% of the joint funds, when in fact Dad was the principal contributor to that estate.

Despite our protests, Mom was moved to an assisted living facility near Teresa. After 2 years of brainwashing by Teresa and her allies, Mom is now separated from us not only by distance, but also emotionally.

There's a very obvious conflict of interest here: the court and its officers are the ones who get to decide whether the source of their financial "gravy train" stays in Connecticut or is allowed to leave the state! It is clearly in THEIR best interests financially that Mom stay in Connecticut. The Probate Court's primary function in this case should be the reuniting of Maydelle with her FAMILY, and the true conservation of her person and financial estate, NOT the reallocation of her hard-earned assets to court officers' own bank accounts!

I would not wish our circumstances on anyone. A loving family has been torn apart by a self-serving legal system containing an insidious corruption of cronyism and greed, used to the utmost by someone who knows how to manipulate the system for her own perfidious ends. Unfortunately, we now know our family is not alone in this horrible situation. As more Americans approach what should

Anne Trambarulo Haines 12 Pine Hill Rd., Englishtown NJ 07726 (732)446-3853
syringa12@aol.com

be their "Golden Years", this assault on fundamental rights is being repeated nationwide. Being aware of the disastrous possibilities is the first step to protecting yourself and your loved ones!

Anne Trambarulo Haines 12 Pine Hill Rd., Englishtown NJ 07726 (732)446-3853
syringa12@aol.com

Greater Hartford Legal Aid, Inc.

JUDICIARY COMMITTEE

March 30, 2007

Testimony of Attorney Veronica Halpine in Support of Raised Bills:

No. 1272: **AN ACT CONCERNING ADMINISTRATION OF THE COURTS OF PROBATE AND THE DUTIES OF THE PROBATE COURT ADMINISTRATOR.**

No. 1439: **AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS.**

No. 1453: **AN ACT CONCERNING THE TRANSFER OR AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.**

Senator McDonald, Representative Lawlor and members of the Committee:

I am an elder law attorney at Greater Hartford Legal Aid. GHLA has a federal grant to represent people over 60 years of age on fundamental issues. As a rule, GHLA does not accept cases where there is court appointed counsel. We created an exception to this rule about six years ago because of the growing awareness of the institutional failure of the probate process. When fundamental rights are at stake, there should be heightened procedural protections. People are losing their liberty, property and right to familial integrity without the procedural protections afforded in small claims court. Reform is long overdue and the Chief Probate administrator must be given authority to hold the individual courts accountable.

I have attached a bill drafted by the Conservator Revision Committee chaired by Judge Killian and respectfully request that it replace the language in raised bill 1439. The new language reflects a compromise between a broad spectrum of people regularly involved in probate matters. It seeks to bring Connecticut into compliance with the recommendations made by the American Bar Association over ten years ago. West Virginia and Texas have more enlightened probate laws than Connecticut. One of the drafters of the West Virginia law told me their law was drafted as part of that state's concerted effort to attract retirees. Retirees bring income and don't tax the school system. Connecticut has an obligation to protect its aging population from the ravages of the probate system. It is personally and financially devastating. If the individual has prepared advanced directives, those documents should be respected. Courts should tailor the appointment to the need presented. Conservators should heed the reasonable wishes of the conserved individual. There should be a record of the proceedings and the rules of evidence should apply. The heightened evidentiary standard is meaningless without the rules of evidence. A person subject to conservatorship proceedings should be allowed to remove the matter to superior court for a more formal determination of his or her rights. And there should be a meaningful right of appeal.

I entreat you to vote favorably on all of these bills.

999 Asylum Ave., 3rd Floor • Hartford, CT 06105-2465 • Tel: 860. 541. 5000 • Fax: 860. 541.5050 • TTY: 860. 541.5069

E-Mail LegalAid@ghla.org United Way Web site: www.ghla.org

005593

REPORT OF REPRESENTATIVE
FOR INTERESTED PARTY
PC-170 (BBS) REV. 3/97

STATE OF CONNECTICUT
COURT OF PROBATE

RECORDED:

[Type or print in black ink.]

RECEIVED
SEP 01 2005
WATERBURY DISTRICT
PROBATE COURT

TO: COURT OF PROBATE, DISTRICT OF WATERBURY

DISTRICT NO. 151

ESTATE OF/IN THE MATTER OF	PERSON(S) REPRESENTED
DANIEL GROSS	DANIEL GROSS

THE REPRESENTATIVE states that he or she has acquainted himself or herself with the rights of those he or she represents in the following matters, where checked; has examined the circumstances of the matter; has taken such action as necessary for the protection of such rights; and, with respect to such rights, has no legal objections to:

☐ The admission to probate of the will and/or codicils, if any, so offered by the petitioner and the issuance of letters testamentary to the proposed fiduciary OR the granting of letters of administration to the proposed fiduciary.

☐ The granting of authority to sell or mortgage the real property on the terms and conditions set forth in the application to sell or mortgage.

☐ The allowance of the administration account.

☒ The appointment of a conservator of the ☒ estate ☒ person.

☐ The allowance of the following interim account(s): *[Specify dates covered by each such account.]*

☐ Other *[Specify.]*

COMMENTS BY REPRESENTATIVE *[Use back of form or additional sheets if more space is required, BUT PLEASE NOTE: All comments by an appointed ATTORNEY representative are subject to the attorney/client requirements as set forth in Rule 1.6 of the Rules of Professional Conduct.]*

SEE ATTACHED REPORT

RECEIVED

SEP 0 1 2005

WATERBURY DISTRICT
PROBATE COURT

PC170 CONTINUED
MATTER OF DANIEL GROSS
APPLICATION FOR CONSERVATOR

I had the opportunity to speak with Dee King, meet with Barbara Limauro and Dale Darling, who flew in from California for the hearing, and meet with Daniel Gross. I also reviewed the medical records. I attempted to contact Les Gross but was not fortunate to speak with him. My findings are as follows: Mr. Gross is an 85 year old gentleman who ambulates with the assistance of a crutch. He was alert and appears to be very intelligent. Mr. Gross has a house in Levittown Long Island and was staying with his daughter Dee in Waterbury, Connecticut. On August 8, 2005 he was admitted to Waterbury Hospital where he continues to stay. Mr. Gross is diagnosed with cellulitis of both lower extremities. He has a pulmonary problem, cardiac problem, a colostomy from a receptive colon and possible dimentia. The doctor report stated possible bipolarism but the undersigned did not see any signs of this during the interview.

Mr. Gross takes seroquel, lopressor, a multivitamin, senokot, ecotrin, eye drops, mycostatin, tylenol, dulcolax, maalox and haldol. It was conveyed to the undersign that he is a difficult patient in that he does not trust anyone. This was evident as he displayed distrust for me even though I conveyed who I was and my purpose. Eventually, at the end of our meeting, Mr. Gross appeared to warm up to me.

Mr. Gross did not display eye contact with me throughout our conversation. He lost his concentration and thoughts throughout our conversation and used his cellulitis as the reason for this. He stated that it was the toxins running through his body. He was able to recall his past and informed me that he was a service manager for Hollock Industries. He was able to recall where he lived and digressed into politics. He stated that George Bush was not doing a good job by letting the Iraqis build atomic bombs and that we would be sorry. He mentioned this a few times throughout our meeting. He came across very intelligent and informed me that he has two patents dealing with combustion.

Mr. Gross collects social security in the amount of $1,211.00 per month, veterans benefits in the amount of $324.00 per month and has a reversible mortgage on his property. He was residing alone in Long Island and had eight cats living in his house. His daughter Dee has always taken care of his financial affairs. She informed me that she had to send a cleaning team to his house to clean the stench. Dale, the daughter from California believes that Dee is renovating the house using Daniel's funds and intends to sell the house. There is alot of animosity, mistrust and disfunction between the siblings. Daniel informed me that he does not trust his daughters and believes they all want his assets and money. Daniel does have a bank account with Astoria savings and there is currently $16,000.00 in there. Dale believes there is $14,000.00 unaccounted for and thinks Dee used those funds to renovate the house.

Both daughters believe Daniel needs a conservator and needs twenty-four hour care. They believe he cannot live on his own. Each daughter believes that the other daughter should not be conservator as they do not have Daniel's best interest in mind. Daniel wants to live at home

and manage his own affairs. Daniel was profound throughout our conversation, repeated himself alot, and used alot of cliches. He was emotional when speaking about his late wife. Daniel informed me that he does not "need to be incarcerated" and wants to show the girls that he is the "leader of the house." He informed me that in the end he wants to split his assets equally with his three children.

It is my opinion based upon my findings that Daniel Gross could benefit from a conservator of his estate and person due to his physical and mental deficiencies. It appears that he has some type of memory loss or dimentia. Based upon my findings, I cannot find any legal basis in which to object to the appointment of a conservator of Daniel Gross' person and estate. Barbara Limauro is of the opinion that Daniel could benefit from a conservator. I would have some hesitation in appointing either daughter as conservator as there is too much tension between them and too much distrust among them.

Dated at Waterbury, Connecticut, this 31st day of August 2005.

Jonathan C. Newman
Attorney for Ward

005596

DECREE/APPOINTMENT OF CONSERVATOR
PC-360 REV. 10/06

STATE OF CONNECTICUT

COURT OF PROBATE

RECORDED:

COURT OF PROBATE, DISTRICT OF Ellington

DISTRICT NO. 048

IN THE MATTER OF

[redacted]

HEREINAFTER REFERRED TO AS THE RESPONDENT,
A PROCEEDING FOR INVOLUNTARY
REPRESENTATION

CONSERVATOR OF ESTATE [*Name, address, zip code, and telephone number.*]	CONSERVATOR OF PERSON [*Name, address, zip code, and telephone number.*]
JOHN A. HENNEBERGER, ESQ. HENNEBERGER & FRACCHIA, LLC 1227 BURNSIDE AVENUE, SUITE 29 EAST HARTFORD, CT 06108 (860)290-1810	JOHN A. HENNEBERGER, ESQ. HENNEBERGER & FRACCHIA, LLC 1227 BURNSIDE AVENUE, SUITE 29 EAST HARTFORD, CT 06108 (860)290-1810

At a court of probate held at the place and time of hearing set by the court, together with any continuances thereof, as of record appears, on the petitioner's application for the appointment of a conservator of the person and estate of said respondent.

PRESENT: Hon. O. James Purnell, III, Judg

After due hearing, THE COURT FINDS that:

Notice of hearing was given in accordance with the order of notice previously entered.

The respondent was unable to request or obtain counsel, and the court appointed an attorney to represent the respondent.

The respondent resides or has domicile in this probate district, and jurisdiction of this matter appertains to this court.

The conservator named above has accepted the position of trust.

And it is ORDERED AND DECREED that:

The conservator named above *is* appointed conservator of the person and the estate of the respondent as indicated above.

The Court dispenses with the requirement of a probate bond.

The conservator place Helen Crudden in Maple View Manor, Rocky Hill, Connecticut.

The conservator of the estate shall immediately record a Notice for Land Records/Appointment of Conservator, PC-350, in the land records of each town where the respondent owns or has an interest in real property, as provided in C.G.S. §45a-658.

Two months from the date hereof be and the same is allowed the conservator of the estate within which to make a true and complete inventory of all property of the respondent and return the same under oath to the court.

Dated at Vernon, Connecticut, this 16th day of November, 2006.

CERTIFIED TO BE A TRUE COPY

Julie A. Mathison

JUDGE/ASSISTANT/CLERK

PROBATE COURT, DIST. OF ELLINGTON

O. James Purnell, III, Judge

[illegible], the word *conservator* includes the plural, where the context so requires.

DEC[illegible]
PC-360

Fol. A

FIDUCIARY'S PERIODIC OR FINAL ACCOUNT (SHORT FORM)
PC-441 (BBS) REV. 3/98

STATE OF CONNECTICUT
COURT OF PROBATE

CORDED:

Type or print in black ink.

TO: COURT OF PROBATE, DISTRICT OF Ellington DISTRICT NO. 48

IN THE MATTER OF
[redacted]
Hereinafter referred to as the estate.

If other than decedent's estate, give name, address, and zip code of ward or minor.
[redacted]

FIDUCIARY (Name, address, zip code, and telephone number)
John A. Henneberger
1227 Burnside Ave., Suite 29
East Hartford, CT 06108 860-290-1810

POSITION OF TRUST
Conservator

THE FIDUCIARY HEREBY EXHIBITS this account to said court for allowance and makes oath that the same is a true and complete account of all receipts and disbursements made in said capacity. This account covers the time period from 11/16/06 to 2/28/07 and is being filed for the following type of estate Conservator (i.e. conservator) for the following reason:

☐ Periodic account. C.G.S. § 45a-177

☐ For filing only.

☐ A hearing is requested.

☑ Final account. C.G.S. § 45a-179

☐ The fiduciary represents that there are no debts outstanding against said estate except as herein stated and, accordingly, application is hereby made for an order of distribution or an order of transfer of the remaining assets of said estate.

(Use Second Sheet, PC-180, for any supporting schedule.)

ASSETS AND INCOME RECEIVED BY FIDUCIARY

To amount of inventory/estate on hand as of last account	$ 134,782.03
Schedule A To amount of income received	
Dividends	
Social Security payments	
Pension payments	
Interest, Account No. In	
[Other] Schedule B	5,338.00
TOTAL	$ 140,120.03

PAYMENTS AND DISTRIBUTIONS BY FIDUCIARY

By payments made to or for the benefit of	
as per Schedule C	18,348.22
By administration expenses	
Probate court costs	
Fiduciary's fee (Show disbursements separately.) Schedule D	8,023.69
Attorney's fees (Show disbursements separately.) Schedule E	350.00
(Other) Schedule F	2,467.50
Amount on hand/estate on hand for distribution	
Real property	
Personal property Schedule G	110,930.62
TOTAL	$ 140,120.03

(If final account, attach schedule of proposed distribution or transfer.)

The representations contained herein are made under the penalties of false statement.

FIDUCIARY'S SIGNATURE John A. Henneberger DATE 3/2/07

FIDUCIARY'S PERIODIC OR FINAL ACCOUNT (Short Form)

005598

DECREE/APPOINTMENT OF
TEMPORARY CONSERVATOR
PC-363 REV. 10/01

STATE OF CONNECTICUT

COURT OF PROBATE
[*Type or print in black ink.*]

RECORDED:

COURT OF PROBATE, DISTRICT OF East Windsor | DISTRICT NO. 047

IN THE MATTER OF

HEREINAFTER REFERRED TO AS THE RESPONDENT, A PROCEEDING FOR INVOLUNTARY REPRESENTATION.

TEMPORARY CONSERVATOR OF ESTATE [*Name, address, zip code, and telephone number.*]	TEMPORARY CONSERVATOR OF PERSON [*Name, address, zip code, and telephone number.*]
Cathryn-Jean Fleming Esq., 174 Merrow Road, Tolland, CT 06084, (860)871-6836	Cathryn-Jean Fleming Esq., 174 Merrow Road, Tolland, CT 06084, (860)871-6836

PRESENT: Hon. Marianne Lassman Fisher, Judge

Upon the application for appointment of a temporary conservator, THE COURT FINDS that:
The respondent resides or is domiciled in the probate district, and jurisdiction of this matter appertains to this Court.

The respondent was unable to request or obtain counsel, and the Court appointed an attorney to represent the respondent.

From medical and/or other evidence presented, THE COURT FINDS that the respondent is:

incapable of managing *her* affairs, expressly including the exercising of all civil or personal rights described in C.G.S. §45a-644(d) as modified by C.G.S. §45a-655, by reason of requires assistance in these areas

incapable of caring for *herself*, expressly including the exercising of all civil or personal rights described in C.G.S. §45a-644(c) as modified by C.G.S. §45a-656, by reason of requires assistance in these areas

THE COURT FURTHER FINDS that irreparable injury to the:

of the respondent will result if the temporary conservator *is* not appointed forthwith.

THE COURT FURTHER FINDS that

The temporary conservator named above *has* accepted the position of trust, and

All parties of record have agreed to the appointment of a Temporary Conservator of the Person & Estate pending an updated Physicians evaluation and continuance on the application for permanennt Conservatorship of the Person & Estate.

probate bond of the conservator of the estate is fixed at $ 150,000 non-surety

Therefore, it is ORDERED AND DECREED that:

The temporary conservator named above is appointed temporary conservator of the respondent's PERSON AND ESTATE

Said appointment shall be valid for 60 days. , unless application is filed under C.G.S. §45a-650, in which case not to exceed sixty days pursuant to C.G.S. §45a-654(a).]

The conservator of the estate shall immediately record a Certificate of Notice for Land Records, PC-350, in the land records of each town where the respondent owns or has an interest in real property, as provided in C.G.S. §45a-658.

The pending application for permanent Conservator of the Person & Estate shall be continued. The Ward shall be re-evaluated by a Connecticut Liscensed Physicianwithin the next 45 (forty five) days and prior to the hearing .

DECREE/APPOINTMENT OF
TEMPORARY CONSERVATOR
PC-363 REV. 10/01

STATE OF CONNECTICUT

COURT OF PROBATE
[*Type or print in black ink.*]

RECORDED: 005599

COURT OF PROBATE, DISTRICT OF East Windsor DISTRICT NO. 047

IN THE MATTER OF

HEREINAFTER REFERRED TO AS THE RESPONDENT, A PROCEEDING FOR INVOLUNTARY REPRESENTATION.

Dated at South Windsor, Connecticut, this 7th day of April, 2005.

Marianne Lassman Fisher

Marianne Lassman Fisher, Judge

As used in this decree, the word *conservator* includes the plural, where the context so requires.

005600

APPLICATION FOR APPOINTMENT OF CONSERVATOR
PC-300 REV. 10/97 Page 1

STATE OF CONNECTICUT

COURT OF PROBATE
[Type or print in black ink.]

RECORDED:

TO: COURT OF PROBATE, DISTRICT OF Windsor DISTRICT NO. 164

IN THE MATTER OF
[redacted]

RESPONDENT'S SOCIAL SECURITY NUMBER
[redacted]

RESPONDENT'S DATE OF BIRTH
[redacted]

Hereinafter referred to as the respondent, a proceeding for involuntary representation.

PETITIONER [Name, address, zip code, and telephone number]
Kimberly Hall South
1 Emerson Drive
Windsor, CT 06095

RELATIONSHIP OF PETITIONER TO RESPONDENT
Skilled Nursing Facility

RESPONDENT'S HOME ADDRESS
Kimberly Hall South
217A
1 Emerson Drive
Windsor, CT 06095

E217

RESPONDENT'S PRESENT ADDRESS, IF INSTITUTIONALIZED
Kimberly Hall South - 217A
1 Emerson Drive
Windsor, CT 06095

217E

[redacted]

PERSONS TO WHOM NOTICE SHOULD BE GIVEN: SPOUSE [If not the petitioner], CLOSEST RELATIVES [If none, so state.], and INTERESTED PARTIES as defined in Probate Practice Book, Rule 3.1.02. [Give names, addresses, zip codes, and relationships to

THE PETITIONER FURTHER REPRESENTS that said respondent:

Is now living at the present address written above and is domiciled in the town written above.

☑ Has ☐ Has not designated a conservator as provided by C.G.S. §45a-645 [Include name and address. If unknown, so state.] COE-attorney Steve Allen

If the respondent has designated a conservator, and the proposed conservator named herein is not the designated conservator, explain by separate document.

☑ Has ☐ Has not executed a living will.

☐ Has ☑ Has not appointed a health care agent. [Include name and address. If unknown, so state.]

A TRUE COPY
ATTEST:
GRANT CARRAGHER
CT STATE MARSHAL

☐ Has ☑ Has not executed a power of attorney for health care decisions. [Include name and address of person appointed to act. If unknown, so state.]

☐ Has ☑ Has not executed a durable power of attorney [Include name and address of person appointed to act. If unknown, so state.]

☐ Does ☑ Does not own real property. C.G.S. §45a-658. [Include address(es), if applicable.]

☐ Has ☑ Has not received public assistance or institutional care from the State of Connecticut. Conn. Gen. Statutes Chapter 302.

☐ Is ☑ Is not a patient of the Veterans' Home and Hospital, Rocky Hill, CT. C.G.S. §45a-649.

☐ Is ☑ Is not a veteran or beneficiary receiving payments under any account from the Veterans' Administration. C.G.S. §45a-593.

☑ Is ☐ Is not a patient in a hospital or institution. C.G.S. §45a-649.

☐ Is ☑ Is not in an institution for the mentally ill or mentally deficient in this state. C.G.S. §4a-17. If so, the respondent is in such institution on the following basis:

- ☐ Confined by order of a court. C.G.S. §4a-17.
- ☐ Confined under emergency certificate of a physician. C.G.S. §4a-17.
- ☐ Voluntary admission.

☐ Is or is expected to become an inpatient or outpatient in a hospital, clinic, or other facility for the diagnosis, observation, or treatment of mental illness. [Note: If this box is checked, AND if consent or other authorization is being sought for (a) psychiatric medication treatment and/or (b) shock therapy, special statutory requirements must be met. The applicable forms (CM-42 or CM-46 for psychiatric medication and CM-44 for shock therapy), together with all supporting documentation, MUST be attached to this form. ALL of the documents filed in connection therewith will be recorded in a confidential volume.]

☑ Is ☐ Is not able to request or obtain an attorney. C.G.S. §45a-649.

☐ Is ☑ Is not able to pay for the services of an attorney. [Submit Request/Order Waiver of Fees, PC-184A.]

[Continued]

specify

I can handle difference as they are now!

APPLICATION FOR APPOINTMENT OF CONSERVATOR
PC-300 REV. 11/00 Page 2

STATE OF CONNECTICUT

COURT OF PROBATE
[*Type or print in black ink.*]

RECORDED: 005607

THE PETITIONER FURTHER REPRESENTS that:

A
(Conservator of the Estate)

title 19 (mental)

☐ The condition described above prevents the respondent from performing the functions inherent in managing his or her affairs, and

☐ the respondent has property rights which will be wasted or dissipated unless proper management is provided.

☐ funds are needed for the support, care, or welfare of the respondent, and the respondent is unable to take the necessary steps to obtain or provide such funds.

☐ funds are needed for the support, care, or welfare of those entitled to be supported by the respondent, and the respondent is unable to take the necessary steps to obtain or provide such funds.

B
(Conservator of the Person)

☑ The condition described above results in endangerment to the respondent's health because of the inability to provide:

☑ medical care for physical and mental health needs.

☑ nutritious meals or clothing or safe and adequately heated and ventilated shelter or personal hygiene.

☑ protection from physical abuse or harm.

WHEREFORE, THE PETITIONER REQUESTS that this Court appoint the proposed conservator named below or some other suitable person as conservator as aforesaid of the respondent. [*NOTE: If the Commissioner of Social Services is the proposed conservator of the estate and/or person, attach Affidavit, PC-310. C.G.S. §45a-651.*]

The representations contained herein are made under the penalties of false statement.

Date Sept 5, 06

Petitioner's Signature

Darryl LeCours Ed.M.
Administrator

PROPOSED CONSERVATOR

If appointed, I will accept said position of trust.

Signature .....

Name [*Type or print*] .....

Address .....

Telephone Number .....

ATTEST: C. Jordan Asst. CLERK

ATTORNEY FOR PETITIONER [*Name, address, zip code, telephone number, and juris number.*]

ATTORNEY FOR RESPONDENT [*Name, address, zip code, telephone number, and juris number.*]

EXAMINING PHYSICIAN [*Name, address, zip code, and telephone number.*] C.G.S. §45a-650.

A TRUE COPY
ATTEST:
GRANT CARRAGHER
CT STATE MARSHAL

REPORT OF REPRESENTATIVE
FOR INTERESTED PARTY
PC-170 (BBS) REV. 3/97

STATE OF CONNECTICUT
COURT OF PROBATE

RECORDED:

[Type or print in black ink.]

TO: COURT OF PROBATE, DISTRICT OF HARTFORD DISTRICT NO. 64

IN THE MATTER OF	PERSON(S) REPRESENTED
Victor [redacted], an alleged incapable person of Hartford, Connecticut.	Victor [redacted]

THE REPRESENTATIVE states that he or she has acquainted himself or herself with the rights of those he or she represents in the following matters, where checked; has examined the circumstances of the matter; has taken such action as necessary for the protection of such rights; and, with respect to such rights, has no legal objections to:

- ☐ The admission to probate of the will and/or codicils, if any, so offered by the petitioner and the issuance of letters testamentary to the proposed fiduciary OR the granting of letters of administration to the proposed fiduciary.
- ☐ The granting of authority to sell or mortgage the real property on the terms and conditions set forth in the application to sell or mortgage.
- ☐ The allowance of the administration account.
- ☒ The appointment of a conservator of the ☒ estate ☒ person.
- ☐ The allowance of the following interim account(s): *[Specify dates covered by each such account.]*
- ☐ Other *[Specify.]*

COMMENTS BY REPRESENTATIVE *[Use back of form or additional sheets if more space is required, BUT PLEASE NOTE: All comments by an appointed ATTORNEY representative are subject to the attorney/client requirements as set forth in Rule 1.6 of the Rules of Professional Conduct.]*

Victor [redacted] prizes his independence as he confronts the challenges of advanced stomach cancer and onset of dementia lacking family close by and few resources other than those provided by the state. He resists the appointment of a conservator except in the event of his future incapacity. Mr. [redacted] lives alone in his apartment supported by Connecticut Community Care Services, which include a home health aide and homemaker for two hours daily and biweekly visits by a worker to change his transdermal pain patch and support his medication compliance. He accepts these services reluctantly.

This writer visited Mr. [redacted] on 9/14/05 in the company of the CCCI worker who visits him biweekly. Mr. [redacted] states that he is able to care for himself and that he does not need court interaction. He appeared adequately nourished with the meals he prepares for himself. However, he did not know or understand that his oncologist had stopped treating him because of poor medication compliance. The CCCI worker explained to this writer that Mr. [redacted]'s oncologist did not speak Spanish and that no interpreter was present to clarify communications between doctor and patient. When this writer asked Mr. [redacted] if he would take the medication, since it involved taking one more pill in his daily arsenal of pills, Mr. [redacted] agreed and asked to see his oncologist in order receive the medication. This writer asked the CCCI worker to call the oncologist to pursue the matter.

Victor [redacted]'s difficulty in communicating with his oncologist regarding basic treatment is compounded by his forgetfulness (a symptom of moderate dementia as outlined in the IOL Psychiatry Consultation of 8/23/05). It also stems from his lack of a formal education and his inability to speak English. Taken together these factors indicate that Victor [redacted] would benefit from a conservatorship structured to protect his basic needs while preserving utmost respect for his desire to remain independent. At this time he appears adequately fed through his own meal preparation and adequately, though not perfectly, groomed. He should be allowed to remain in his own apartment as long as possible.

Dated at West Hartford Connecticut, this 19th day of September, 2005

SIGNED [signature]
Linda I. Feldman, Esq. Representative for an interested party

State of Connecticut

Court of Probate
District of Hartford

Robert K. Killian, Jr.
Judge

250 Constitution Plaza, 3rd Floor
Hartford, Connecticut 06103-2814
Phone Num. (860) 757-9150

November 3, 2005

Victor [redacted]
[redacted]
Hartford, CT 06106

RE: **REQUEST FOR RESTORATION**

Dear Mr. [redacted]:

This is to inform you as to the steps that are to be taken in order to request to be restores to capacity, and that you're Conservatorship be terminated.

1. You must write a letter to the court in which, you will request your restoration to capacity, and the termination of the Conservatorship.

2. You must have the Physician's Evaluation form (PC-370) duly executed by a physician and/or a psychiatrist.
   (**Note**: I the cause that prompted the appointment of conservator was a psychological condition a psychiatrist must complete the report; if the cause was a physical condition then a physician can complete the report)

Upon receipt of Physician's Evaluation form and your letter of request, the court will then set a hearing, and be aware that you must attend this hearing.

If you have any questions regarding this matter, please do not hesitate to call the Hartford Probate Court at (860) 757-9150.

Sincerely,

Tatiana Serrano, Ass't Clerk
Conservator Department

Enclosed: PC-370

JOHN H. HARRINGTON, ESQ., LLC

ATTORNEY AT LAW
527 TUNXIS HILL ROAD
FAIRFIELD, CONNECTICUT 06825-4442
WWW.JOHNHARRINGTON.NET

Received
March 4, 2005
Fairfield Probate Court

E-MAIL JHH@JOHNHARRINGTON.NET
ADMITTED IN NY AND CT

PHONE (203) 331-1881
FAX (203)330-9252

March 4, 2005

Hon. Judge Daniel Caruso
Court of Probate
Independence Hall
Fairfield, CT 06824

Via First Class Mail

Re: Estate of [redacted], Con.

Dear Judge Caruso:

This report is prepared pursuant to [redacted] request to remove his conservator. [redacted] states that he has been living independently for one year. He has been working for four years, currently 25 hours per week, at the Valley YMCA in Ansonia. [redacted] has made great strides since I was appointed his attorney in 1996. Then, he was dwelling at Operation Hope, mentally ill with no interaction within his surroundings whatsoever. Today, he is an increasingly functional, responsive and cheerful member of his community.

[redacted] lives in extremely modest surroundings at the YMCA. His disposable income is nominal, which he appears to be spending rationally. However, he remains reliant upon his sister, [redacted], to assist him in managing his financial affairs as his conservator. In the absence of a conservator, [redacted] stated that he would rely on the Birmingham Group as the depositor of his social security check. This would result in a fee charged which would diminish his already limited income.

While [redacted] certainly deserves recognition for the progress he has made in consistently improving his life, it is premature that the conservatorship be removed. I would support such an application at a later time, when [redacted] has become more independent financially and from a standpoint of his personal affairs.

Thank you.

Very truly yours,

John H. Harrington [– Attorney for the ward]

cc: [redacted]

Conservator Statutes Revision Committee
Connecticut

SB 1439

March 23, 2007
Draft bill no. 8

Section 1. Section 45a-132a of the general statutes **(Examination of incapable party. Expense.)** is repealed and the following is substituted in lieu thereof:

In any matter before a court of probate in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state. A conserved individual or the respondent to an application for involuntary representation made under section 45a-648, as amended, and temporary representation under section 45a-654, as amended, may refuse to undergo an examination ordered by the court under this section. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such examination or the estate of the alleged incapable in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

Sec. 2. Section 45a-186 of the general statutes **(Appeals from probate.)** is repealed and the following is substituted in lieu thereof:

(a) Any person aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, may, not later than forty-five days after mailing of such order, denial or decree for matters heard under sections. 45a-593, 45a-594, 45a-595, 45a-597, 45a-644 to 45a-677, inclusive, and 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of such order, denial or decree for all other matters in the Court of Probate, appeal therefrom to the Superior Court [in accordance with subsection (b) of this section. Except in the case of an appeal by the state, such person shall give security for costs in the amount of one hundred fifty dollars, which may be paid to the clerk, or a recognizance with surety annexed to the appeal and taken before the clerk or a commissioner of the Superior Court or a bond substantially in accordance with the bond provided for appeals to the Supreme Court.] Such an appeal shall be commenced by filing a complaint in the Superior Court in the judicial district in which such Probate Court is located, except that (1) an appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of subsection 12-395 shall be filed in the judicial district of Hartford and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the Superior Court for juvenile matters having jurisdiction over matters arising in such probate district. The complaint shall state the reasons for appeal. A copy of the order, denial or decree appealed from shall be attached thereto. Appeals from any decision

rendered in any case after a [record] recording is made of the proceedings under sections 17a-498, 17a-685, 45a-650, 51-72 and 51-73 shall be on the record and shall not be a trial de novo.

(b) [Any such appeal shall be filed in the superior court for the judicial district in which such court of probate is located except that (1) any appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of section 12-395, shall be filed in the judicial district of Hartford and (2) any appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters arising in such probate district.] A person appealing pursuant to this section shall serve a copy of the complaint on the Probate Court that rendered the order, denial or decree appealed from and on all interested parties. Failure to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50 of the general statutes, service of the copy of the complaint shall be by state marshal, constable, or an indifferent person. Service shall be in hand or by leaving a copy at the Probate Court that rendered the order being appealed, or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with said probate court, except that service on a respondent or conserved individual in an appeal from an action under chapter 802h, part IV of the general statutes shall be in hand by a state marshal, constable or an indifferent person.

(c) Not later than fifteen days after filing an appeal under this section, the person appealing shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service and (2) a statement of the date and manner in which a copy of the complaint was served on the Probate Court and each interested party.

(d) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.

(e) A hearing in an appeal from probate proceedings under sections 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703 and 45a-717 shall commence, unless a stay has been issued pursuant to subsection (f) of this section, not later than ninety days after the appeal has been filed.

(f) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Probate Court or the Superior Court. Filing of the motion with the Probate Court shall not preclude action by the Superior Court.

(g) Nothing in this section shall prevent use by an individual aggrieved under subsection (a) of this section of a petition for a writ of habeas corpus, a petition for termination of an involuntary conservatorship or other available remedy.

Sec. 3. (NEW) (Section 45a-186a. Record. Hearing.) (a) In an appeal from an order, denial or decree of the Probate Court made after a hearing that is on the record, the Probate Court, not later than thirty days after service of the appeal under section 45a-186, as amended by this act, or within such further time as may be allowed by the Superior Court, shall transcribe any portion of the recording of the proceedings that has not been transcribed. The Probate Court shall transmit to the Superior Court the original or a certified copy of the entire record of the proceeding from which the appeal was taken. The record shall include, but not be limited to, the findings of fact and conclusions of law, separately stated, of the Probate Court.

(b) An appeal from an order, denial or decree made after a hearing on the record shall be conducted by the Superior Court, including a state referee appointed under section 51-50*l* of the general statutes, without a jury. Such an appeal shall be confined to the record. If alleged irregularities in procedure before the Probate Court are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the Superior Court. The court, on request, shall hear oral argument and receive written briefs.

Sec. 4. (NEW) (Section 45a-186b. Action of Superior Court on appeal) In an appeal taken under section 45a-186, as amended, from a matter heard on the record in the Probate Court, the Superior Court shall not substitute its judgment for that of the Probate Court as to the weight of the evidence on questions of fact. The Superior Court shall affirm the decision of the Probate Court unless the court finds that substantial rights of the person appealing have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) in violation of the federal or state constitutions or statutes of this state, (2) in excess of the statutory authority of the probate court, (3) made on unlawful procedure, (4) affected by other error of law, (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Superior Court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment that modifies the Probate Court order, denial or decree or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

Sec. 5. (NEW) (Section 45a-186c. Costs. Waiver.) (a) In an appeal taken under 45a-186, as amended by this act, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that such costs are allowed in judgments rendered by the Superior Court.

(b) If the appellant claims that such appellant cannot pay the costs of an appeal taken under section 45a-186, as amended, the appellant shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such costs, including the requirement of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render judgment on the application for waiver, which judgment shall contain a

statement of the facts found by the court and the court's conclusions based on the facts found. The filing of the application for the waiver shall toll the time limit for the filing of an appeal until such time as a judgment on such application is rendered. A fiduciary acting on an order of the court made after expiration of the period of appeal shall not be liable for actions made in good faith unless such fiduciary has actual notice of the tolling of the appeal period.

Sec. 6. Section 45a-199 of the general statutes **("Fiduciary" defined.)** is repealed the following is substituted in lieu thereof:

As used in sections 45a-143, 45a-152, 45a-202 to 45a-208, inclusive, [and] 45a-242 to 45a-244, inclusive, and section 5 of this act, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

Sec. 7. Section 45a-487c of the general statutes **(Representation by court-appointed conservator or guardian, agent, trustee, executor or administrator, or parent.)** is repealed and the following is substituted in lieu thereof:

In connection with trust matters, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: (1) A court-appointed conservator or guardian of the estate may represent and bind the estate that the conservator or guardian controls; (2) a court-appointed conservator or guardian of the person may represent and bind the ward or conserved individual if a conservator or guardian of the ward's or conserved individual's estate has not been appointed; (3) an agent having authority to do so may represent and bind the principal; (4) a trustee may represent and bind the beneficiaries of the trust; (5) an executor or administrator of a decedent's estate may represent and bind persons interested in the estate; and (6) if a conservator or guardian has not been appointed, a parent may represent and bind the parent's minor or unborn child.

Sec. 8. Subsection (b) of section 45a-593 of the general statutes **(Administrator of Veterans' Affairs to be party in interest.)** is repealed and the following is substituted in lieu thereof:

(b) The Administrator of Veterans' Affairs or [his] such administrator's successor shall be an interested party in the administration of the estate of any ward or conserved individual on whose account the benefits are payable or whose estate includes assets derived from benefits paid by the Veterans' Administration, its predecessor or successor.

Sec. 9. Section 45a-595 of the general statutes **(Investment of funds in insurance and annuity contracts by conservator or guardian of estate.)** is repealed and the following is substituted in lieu thereof:

Upon application of a conservator or the guardian of the estate of a ward or conserved individual, the [court of probate] Court of Probate may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company authorized to conduct business in this state, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested in it.

Sec. 10. Section 45a-644 of the general statutes **(Definitions.)** is repealed and the following is substituted in lieu thereof:

For the purposes of sections 45a-644 to [45a-662] 45a-663, inclusive, the following terms shall have the following meanings:

(a) "Conservator of the estate" means a person, a municipal or state official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of section 45a-654, as amended.

(b) "Conservator of the person" means a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by the Probate Court under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of section 45a-654, as amended.

(c) "Incapable of caring for one's self" or "incapable of caring for himself or herself" means that an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health] that results in such individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to meet essential requirements for personal needs.

(d) "Incapable of managing [his or her] the individual's affairs" means that [a person] an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from performing] that results in such

individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to perform the functions inherent in managing [his or her] the individual's affairs, and the [person] individual has property [which] that will be wasted or dissipated unless [proper] adequate property management is provided, or that funds are needed for the support, care or welfare of the [person] the individual or those entitled to be supported by [that person] the individual and that the [person] individual is unable to take the necessary steps to obtain or provide funds [which are] needed for the support, care or welfare of the [person] the individual or those entitled to be supported by such [person] individual.

(e) "Involuntary representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the Court of Probate that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

(f) "Respondent" means an adult person for whom an application for involuntary representation has been filed or an adult person who has requested voluntary representation.

(g) "Voluntary representation" means the appointment of a conservator of the person or estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing [his or her] the individual's affairs or incapable of caring for himself or herself.

(h) ["Ward"] "Conserved individual" means [a person] an individual for whom involuntary representation [is granted] or voluntary representation is appointed under sections 45a-644 to [45a-662] 45a-663, inclusive.

(i) "Personal needs" means needs for an individual such as, but not limited to, food, clothing, shelter, health care and safety.

(j) "Property management" means actions to obtain, administer, manage, protect and dispose of real and personal property, intangible property, business property, benefits and income and to deal with financial affairs.

(k) "Least restrictive means of intervention" means intervention for a conserved individual sufficient to provide, within the resources available to the conserved individual, either from the conserved individual's own estate or from private or public assistance, for a conserved individual's personal needs or property management while affording the conserved individual the greatest amount of independence and self determination.

Sec. 11. (NEW) (Section 45a-644a. Recording of probate proceedings.) A Court of Probate shall cause a recording to be made of all proceedings held under sections 45a-644 to 45a-663, inclusive. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator.

Sec. 12. Section 45a-645 of the general statutes **(Naming of own conservator for future incapacity.)** is repealed and the following is substituted in lieu thereof:

(a) Any [person] individual who has attained at least eighteen years of age, and who is of sound mind, may designate in writing a person or persons whom [he] such individual desires to be appointed as conservator of his person or estate or both, if [he] such individual is thereafter found to be incapable of managing his affairs or incapable of caring for one's self.

(b) The designation shall be executed, witnessed and revoked in the same manner as provided for wills in sections 45a-251 and 45a-257; provided, any person who is so designated as a conservator shall not qualify as a witness.

(c) Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of section 45a-650, if appointed thereafter as a conservator.

Sec. 13. Section 45a-648 of the general statutes **(Application for involuntary representation. Penalty for fraudulent or malicious application or false testimony.)** is repealed and the following is substituted in lieu thereof:

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing [his or her] the respondent's affairs or incapable of caring for [himself or herself] the respondent and stating the reasons for the alleged incapability. The application shall be filed in the [court of probate] Court of Probate in the district in which the respondent resides, [or has his domicile] is domiciled or is located at the time of the filing of the application.

(b) An application for appointment of a conservator for a non-domiciliary of the state made pursuant to subsection (a) of this section, shall not be granted unless the court finds (1) the respondent is presently located in the probate district in which the application is filed; (2) the petitioner has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the respondent has been provided with an opportunity to return to the respondent's place of domicile, including providing the financial means as available to the conserved individual to return to such individual's place of domicile and has declined to return or the petitioner has made reasonable but unsuccessful efforts to return the respondent or conserved individual to such respondent's or such individual's place of domicile; and (4) the requirements of this chapter for the appointment of an involuntary conservator are met.

(c) If, subsequent to the appointment of a conservator for a non-domiciliary of the state, the non-domiciliary becomes domiciled in this state, the provisions of this section no longer apply.

(d) Appointment of a conservator for a non-domiciliary made under subsection (b) of this section shall be reviewed by the court every sixty days. The appointment of such a conservator shall expire sixty days after the date of such appointment or the most recent review ordered by the court, whichever is later, unless the court finds (1) the conserved individual is presently located in the state; (2) the conservator has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the conserved individual has

been provided with an opportunity to return to such individual's place of domicile and has declined to return or the conservator has made reasonable, but unsuccessful efforts, to return the conserved individual to such individual's place of domicile including providing the financial means as available to the conserved individual to return to such individual's place of domicile; and (4) all other requirements of this chapter for the appointment of an involuntary conservator are met. As part of its review, the court shall receive and consider reports from the conservator and from the attorney for the conserved individual regarding the requirements of this subsection.

(e) [Any person who] A person is guilty of fraudulent or malicious application or false testimony when such person willfully [wilfully] files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator or any person who conspires with another person to file or cause to be filed such an application or any person who [wilfully] willfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to [45a-662] 45a-663, inclusive.[, shall be fined not more than one thousand dollars or imprisoned not more than one year or both.] Fraudulent or malicious application or false testimony is a class D felony.

Sec. 14. Section 45a-649 of the general statutes **(Notice of hearing. [Appointment of attorney.])** is repealed and following is substituted in lieu thereof:

(a) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least [seven] ten days before the hearing date, or in the case of applications made pursuant to sections 17a-543 and 17a-543a at least seven days before the hearing, which date shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. Notice of the hearing shall be sent within thirty days after receipt of the application. (1) The court shall direct that personal service be made, by a state marshal, constable or an indifferent person, upon the following: [(A)] The respondent, [except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this section; (B)] the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin of such respondent. (2) The court shall order such notice as it [directs] considers appropriate, including to the following: (A) The applicant; (B) the person in charge of welfare in the town where the respondent is domiciled or resident and if there is no such person, the first selectman or chief executive officer of the town if the respondent is receiving assistance from the town; (C) the Commissioner of Social Services, if the respondent is in a state-operated institution or receiving aid, care or assistance from the state; (D) the Commissioner of Veterans' Affairs if the respondent is receiving veterans'

benefits or the Veterans' Home, or both, if the respondent is receiving aid or care from such home, or both; (E) the Commissioner of Administrative Services, if the respondent is receiving aid or care from the state; (F) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives; (G) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution. (3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified. (4) Failure to give notice to the respondent under the provisions of subdivision (1) of this subsection and of subsection (b) of this section shall deprive the court of jurisdiction to consider such application.

(b) [(1)] The notice required by subdivision (1) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, [and] (C) the time and place of the hearing and (D) that the respondent has a right to be present at the hearing and has a right to be represented by an attorney of the respondent's choice at [his or her own] the respondent's expense. The notice shall include a statement in at least twelve-point type that substantially conforms to the following:

"Possible consequences of the appointment of a conservator

This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted, you will lose some of your rights.

A permanent conservator can be appointed only after a court hearing. You have a right to attend the hearing. If you are not able to get to the court, the hearing can be moved to a convenient location, even to where you are residing.

You should get an attorney to represent you at the hearing. If you are unable to obtain an attorney to represent you, the court will appoint an attorney for you. If you are unable to afford the attorney, the court will pay attorney fees as allowed by court regulation. Even if you qualify for payment of an attorney, you may choose your own attorney if she or he will accept the fee rate approved by the state of Connecticut.

If, after a hearing, the court decides that you lack the ability to care for yourself or pay your own bills, the court may review any alternative plans you have to get assistance to handle your own affairs. If the court decides that there are no adequate alternatives, the court may appoint a conservator and assign the conservator some or all of the duties listed below. While the purpose of a conservator is to help you, you should be aware that appointment of a conservator limits your rights. Among the areas that may be affected are:

- Accessing your money
- Deciding where you live
- Making medical decisions
- Paying your bills
- Planning a budget
- Managing your property

You also have a right to participate in the selection of your conservator. If you have already designated a conservator or if you inform the court of your choice for a conservator, the court must honor your request. The court may refuse your request only if the court decides that the person designated by you is not appropriate.

The conservator appointed for you could be a lawyer, a public official or someone whom you did not know before the appointment. The conservator will be required to make regular reports to the court about you. The conservator may charge you a fee, supervised by the court, for being your conservator."

(c) The notice required by subdivision (2) of subsection (a) of this section shall state only that appointment of a conservator is being sought, the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

(d) If the respondent is unable to request or obtain [counsel] an attorney for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(e) If the respondent notifies the court in any manner that [he or she] the respondent wants to attend the hearing on the application but is unable to do so [because of physical incapacity], the court shall schedule the hearing on the application at a place [which] that would facilitate attendance by the respondent [but if not practical, then the judge shall visit the respondent, if he or she is in the state of Connecticut, before the hearing. Notice to all other persons required by this section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing].

Sec. 15. (NEW) (Section 45a-649a. Right to attorney.) (a) An individual subject to an application for involuntary representation or subject to proceedings subsequent to an appointment of an involuntary conservator shall have the right to be represented by an attorney of the individual's choice at the expense of the individual or, if the individual is indigent, within the payment guidelines of the Probate Court.

(b) If the court finds the respondent or conserved individual indigent or otherwise unable to pay for an attorney, the court shall appoint an attorney for the respondent or conserved individual unless the respondent refuses to be represented by an attorney and the court finds that the respondent or conserved individual understands the nature of the refusal. The court shall appoint an attorney from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations promulgated by the administrator under section 45a-77 of the general statutes.

(c) An attorney appointed pursuant to this section shall represent the respondent or conserved individual in proceedings under sections 45a-644 to section 45a-663, inclusive, of the general statutes, and shall consult with the conserved individual regarding bringing an appeal to the Superior Court under title 45a of the general statutes. If requested to do so by the conserved individual, the attorney shall assist in the filing and commencing of an appeal to the superior court. Assistance in filing an appeal shall not obligate the attorney to appear in or prosecute the appeal. A conservator may not deny the conserved individual access to the individual's resources needed for an appeal.

(d) Nothing shall impair, limit or diminish the right of a conserved individual or respondent to replace the attorney for such individual with another attorney whom such individual selects in accordance with the provisions of this section. Fees of an attorney chosen by the conserved individual shall be approved by the Probate Court or, if an appeal is taken, by the Superior Court.

(e) If the respondent or conserved individual is indigent, an attorney appointed under this section shall be paid a reasonable compensation. Rates of compensation for such appointed attorneys shall be established by the Office of the Probate Court Administrator. Such compensation shall be paid from funds appropriated to the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be paid from the Probate Court Administration Fund.

(f) An attorney representing an individual subject to proceedings under chapter 802h shall not accept appointment as guardian ad litem or conservator of the person or estate for the same individual, unless such attorney has been nominated by the respondent or conserved individual pursuant to section 45a-645, as amended, or similar instrument, including, but not limited to, a trust or an advance directive pursuant to section 19a-580e or 19a-580g, or is nominated by the respondent or conserved individual pursuant to section 45a-650, as amended.

(g) An attorney for the respondent or conserved individual, on presentation of proof of authority, shall have access to all information pertinent to proceedings under title 45a of the general statutes, including immediate access to medical records available to the respondent's treating physician.

Sec. 16. Section. 45a-650 of the general statutes (Hearing. [Medical information.] Evidence. Appointment of conservator. Limitation re powers and duties.) is repealed and the following is substituted in lieu thereof:

(a) At any hearing for involuntary representation, the court shall require clear and convincing evidence that (1) it has jurisdiction, (2) the respondent has been given notice as required by section 45a-648, as amended by this act, and (3) before receiving evidence regarding the condition of the respondent, the respondent is represented by an attorney or the respondent has waived the right to be represented by an attorney.

(b) The rules of evidence promulgated for the Superior Court shall apply to proceedings pursuant to chapter 802h, part IV of the general statutes. Testimony at a hearing held pursuant to this section shall be given under oath or affirmation. The respondent has the right to attend any hearing held under this section.

(c) After making the findings required by subsection (a) of this section, the court shall receive evidence regarding the respondent's condition, the capacity of the respondent to care for one's self or manage the respondent's affairs, and the ability of the respondent to meet his or her needs without appointment of a conservator.[, including a written report or testimony by] Unless waived by the court pursuant to this subsection, evidence shall be introduced from one or more physicians licensed to practice medicine in the state who have examined the respondent within [thirty] forty-five days preceding the hearing. The [report or testimony] evidence shall contain specific information regarding the [disability and the extent of its incapacitating effect] respondent's condition, and the effect of the condition on the respondent's ability to care for one's self or to manage the respondent's affairs. The court may also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, reports from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court [deems] considers qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or [his or her] the respondent's refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the court shall make a specific finding in any decree issued on the [petition] application stating why medical evidence was not required. [In any matter in which the Commissioner of Social Services seeks the appointment of a conservator pursuant to chapter 319dd and represents to the court that an examination by an independent physician, psychologist or psychiatrist is necessary to determine whether the elderly person is capable of managing his or her personal or

financial affairs, the court shall order such examination unless the court determines that such examination is not in the best interests of the elderly person. The court shall order such examination notwithstanding any medical report submitted to the court by the elderly person or the caretaker of such elderly person.] Any [medical report] hospital, psychiatric and medical record or report filed with the court pursuant to this subsection shall be confidential.

[(b)] (d) Upon the filing of an application for involuntary representation pursuant to section 45a-648, as amended, the court [may] shall issue an order for the disclosure of the medical information required pursuant to [subsection (a) of] this section, to the respondent's attorney and, upon request, to the respondent. The court may issue an order for the disclosure of such medical information to other individuals as the court determines necessary.

[(c)] (e) Notwithstanding the provisions of section 45a-7, the court may hold the hearing on the application at a place [within the state] other than its usual courtroom if it would facilitate attendance by the respondent.

[(d)] (f) If the court finds by clear and convincing evidence that the respondent is incapable of managing [his or her] the respondent's affairs and that the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in managing the respondent's affairs, the court [shall] may appoint a conservator of [his or her] the respondent's estate unless it appears to the court that such affairs are being managed [properly] adequately or can be managed adequately without the appointment of a conservator. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself and that appointment of a conservator is the least restrictive means of intervention available to assist the respondent in caring for himself or herself, the court [shall] may appoint a conservator of his or her person unless it appears to the court that the respondent is being cared for [properly] adequately or can be cared for adequately without the appointment of a conservator.

(g) The court shall assign to a conservator appointed under this section only those duties and authorities that are the least restrictive means of intervention necessary for the conserved individual. The court shall find by clear and convincing evidence that such duties and authorities shall restrict the decision-making authority of the conserved individual only to the extent necessary to provide for such personal needs or property management. Such needs and management shall be provided in a manner appropriate to the individual. The court shall make a finding of the clear and convincing evidence that supports the need for each duty and authority assigned to the conservator.

(h) Absent a court order to the contrary and except as otherwise provided in subsection (b) of section 19a-580e, a conservator appointed pursuant to this section shall be bound by all health care decisions properly made by the conserved individual's health care representative.

(i) A conserved individual retains all rights and authority not otherwise assigned to a conservator.

[(e)] (j) When determining whether a conservator should be appointed [and in selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. In making such determination, the court shall consider whether the respondent had previously made alternative arrangements for the care of his or her person or for the management of his or her affairs, including, but not limited to, the execution of a valid durable power of attorney, the appointment of a health-care agent or other similar document.] for the respondent, the court shall consider the following: (1) the abilities of the respondent, (2) the capacity of the respondent to understand and articulate an informed preference, (3) relevant and material information obtained from the respondent, (4) evidence of the respondent's past preferences and life style choices, (5) the respondent's cultural background, (6) the desirability of maintaining continuity in the respondent's life and environment, (7) whether the respondent has made adequate alternative arrangements for the care of his or her person or for the management of the individual's affairs, including, but not limited to, execution of a durable power of attorney, springing durable power of attorney, living will, trust or similar instrument or appointment of a health-care representative or health care agent, (8) any relevant and material evidence from the respondent's family or from a person regarding the respondent's past practices and preferences and (9) supportive services, technology or other means that are available to assist in meeting the respondent's needs. No conservator may be appointed if the respondent's personal needs and property management are being met adequately by an agency or individual appointed pursuant to section 1-43, 19a-575a, 19a-577, 19a-580e or 19a-580g of the general statutes.

(k) The respondent or conserved individual may[, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference,] appoint, designate or nominate a conservator pursuant to sections 19a-580e, 19a-580g or 45a-645 of the general statutes or may, orally or in writing, nominate a conservator who shall be appointed unless the court finds [the appointment of] that the appointee, designee or nominee is [not in the best interests of the respondent. In such case, or in the absence of any such nomination, the court] unwilling or unable to serve or there is substantial evidence to disqualify such person. If there is no such appointment, designation or nomination or if the court does not appoint the person appointed, designated or nominated by the respondent or conserved individual, the court may appoint any qualified person, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644. In considering whom to appoint as conservator under this subsection, the court shall consider (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved individual's preferences, (2) the ability of the proposed conservator to carry out the duties and authorities of the office, (3) the cost to the estate of the respondent or conserved individual, (4) the commitment of the proposed conservator to promoting the respondent's or conserved individual's welfare and independence, and (5) any existing or potential conflicts of interest.

[(f) Upon the request of the respondent or his or her counsel, made within thirty days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

(g)] (*l*) If the court appoints a conservator of the estate of the respondent, it shall require a probate bond. The court may, if it [deems] considers it necessary for the protection of the respondent, require a bond of any conservator of the person appointed under this section.

(m) Nothing in this chapter shall impair, limit or diminish a conserved individual's right to retain an attorney to represent such individual or to seek redress of grievances in any court or administrative agency, including proceedings in the nature of habeas corpus arising out of any limitations imposed on the conserved individual by court action taken under this chapter, chapter 319i, chapter 319j or section 45a-242 of the general statutes. In any other proceeding in which the conservator has retained counsel for the conserved individual, the conserved individual may ask the Probate Court to direct the conservator to substitute an attorney chosen by the conserved individual.

[(h) The court may limit the powers and duties of either the conservator of the person or the conservator of the estate, to include some, but not all, of the powers and duties set forth in subsections (a) and (b) of section 45a-644 and sections 45a-655 and 45a-656, and shall make specific findings to justify such a limitation, in the best interests of the ward. In determining whether or not any such limitations should be imposed, the court shall consider the abilities of the ward, the prior appointment of any attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the ward, any support services which are otherwise available to the ward, and any other relevant evidence. The court may modify its decree upon any change in circumstances.]

Sec. 17. Section 45a-653 of the general statutes **(Contracts and funds of alleged incapable person pending application for appointment of conservator. Notice of application.)** is repealed and following is substituted in lieu thereof:

(a) If an application for the appointment of a conservator has been made, and if, while the application is pending, the applicant records a notice of the application certified by the court with the town clerk of any town within which real property of the alleged incapable person is situated and with the town clerk of the town in which the alleged incapable person resides, any conveyance of such real property by such person and any contract made by such person between the time the notice of the application is recorded and the time of the adjudication of the court upon the application shall not be valid without the approval of the court.

(b) If, during the pendency of the application, the applicant lodges with any bank, trust company or other depositary a notice of the application certified by the court, such bank, trust company or depositary shall not allow any funds of the alleged incapable person to be withdrawn, between the time the notice of the application is lodged and the time of the adjudication of the court upon the application, without the approval of the court.

(c) The original of the notice of the application shall be filed with the court. [A] The notice [recorded or lodged pursuant to this section] may not be recorded or lodged elsewhere unless it is a copy certified by the court. The notice shall state that an application for appointment of a conservator is pending and shall include the name of the

alleged incapable person, the name of the applicant, the probate district in which the application is pending, and the date of application. The notice shall be signed and acknowledged by the applicant. The notice shall not include the allegation of facts on which the application is based.

Sec. 18. Section 45a-654 of the general statutes **(Appointment of temporary conservator. Duties.)** is repealed and the following is substituted in lieu thereof:

(a) Upon written application for appointment of a temporary conservator brought by any person [deemed] considered by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence or domicile of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee, the court may appoint a temporary conservator if the court finds by clear and convincing evidence that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, [and] (2) immediate and irreparable [injury] harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed [pursuant to this section] and (3) appointment of a temporary conservator is the least restrictive means of intervention available to prevent such harm. The court [may, in its discretion,] shall require the temporary conservator to give a probate bond. The court shall limit the duties[, responsibilities] and [powers] authorities of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings [to justify such limitation] by clear and convincing evidence of the immediate and irreparable harm that must be prevented by appointment of a temporary conservator and that support appointment of a temporary conservator. In making such findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. The court shall set forth each duty and authority of the temporary conservator. The temporary conservator shall have charge of the property or of the person of the [respondent] conserved individual or both for such period [of time] or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650. The court may (A) extend the appointment of the temporary conservator until the disposition of such application under section 45a-650, or for an additional thirty days, whichever occurs first, or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist. A temporary conservator shall have charge of the property or of the person of the conserved individual for not more than sixty days from the date of the initial appointment.

(b) [Except as provided in] Unless the requirement of a report by a physician under this subsection is waived by the court pursuant to subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is [presented to the judge] filed with the application, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court [may issue an order] shall provide for the disclosure of the medical information required pursuant to this subsection to the respondent's attorney, to the respondent on the respondent's request and to any other party considered appropriate by the court..

(c) On receipt of the application for the appointment of a temporary conservator, the court shall issue notice to the respondent, appoint counsel and conduct a hearing on the application in the manner pursuant to sections 45a-649 to 45a-650, inclusive, of the general statutes, as amended, except that (1) notice to the respondent shall be given not less than five days before the hearing, which shall be conducted not later than seven days after the application is filed, excluding Saturdays, Sundays, and holidays or (2) notice to the respondent, where an application has been made ex parte for a temporary conservator, shall be given not more than forty-eight hours after the ex parte appointment of a temporary conservator, with the hearing on such ex parte appointment being conducted not later than three days after the ex parte appointment, excluding Saturdays, Sundays and holidays. Service on the respondent of the notice of the application for the appointment of a temporary conservator shall be in hand and shall be made by a state marshal, constable or an indifferent person. Notice shall include (A) a copy of the application for appointment of temporary conservator and accompanying physician's report, (B) a copy of an ex parte decree, if any, appointing a temporary conservator, and (C) the date, place and time of the hearing on the application for the appointment of a temporary conservator. After hearing and on making the findings required in this section, the court may appoint a temporary conservator. If notice is provided to the next of kin under this section, such report of the physician shall not be disclosed to the next of kin except by order of the court.

(d)(1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection [(d)] (c) of this section would cause immediate and irreparable injury to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon receiving the evidence and making the findings required in subsection (a) of this section, provided the court makes a specific finding in any decree issued on the application stating the immediate or irreparable [injury] harm that formed the basis for the court's determination and why such hearing and appointment was not required before issuance of the ex parte order of appointment. If an ex parte order of appointment of a conservator is made, a hearing on the application for appointment of a temporary conservator shall be commenced not later than three days, excluding Saturdays, Sundays and holidays, after the ex parte order was

issued. An ex parte order shall expire not later than three days after the order was issued, unless a hearing on the order commenced before expiration of the three-day period has been continued for good cause.

[(2) After making such ex parte appointment, the court shall immediately: (A) Appoint an attorney to represent the respondent, provided if the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund; (B) schedule the date, place and time of a hearing to be held not later than seventy-two hours after the issuance of the court's decree, excluding Saturdays, Sundays and holidays; and (C) give notice by [mail, or such other notice as the court deems appropriate, on the respondent, the respondent's next of kin and such attorney, which notice shall include: (i) A copy of the application for appointment of temporary conservator and the accompanying physician's report; (ii) a copy of the decree appointing a temporary conservator; and (iii) the date, place and time of the hearing scheduled pursuant to subparagraph (B) of this subdivision, except that if the court determines that notice to the respondent under this subdivision would be detrimental to the health or welfare of the respondent, the court may give such notice only to the respondent's next of kin and the respondent's attorney.]

[(3)](2) After [such] a hearing held under this section, the court [shall] may appoint a temporary conservator, or confirm or revoke the appointment of the ex parte temporary conservator, if any, or may modify the duties[, responsibilities or powers] and authorities assigned under such appointment.

[(d) If the court determines that an ex parte appointment of a temporary conservator pursuant to subsection (c) of this section is not appropriate but finds substantial evidence that appointment of a temporary conservator may be necessary, the court shall hold a hearing on the application. Unless continued by the court for cause, such hearing shall be held not later than seventy-two hours after receipt of the application, excluding Saturdays, Sundays and holidays. Prior to such hearing, the court shall appoint an attorney to represent the respondent in accordance with subsection (c) of this section and shall give such notice as it deems appropriate to the respondent, the respondent's next of kin and such attorney, which notice shall include a copy of the application for appointment of a temporary conservator and the accompanying physician's report. After hearing and upon making the findings required in subsection (a) of this section, the court may appoint a temporary conservator.]

(e) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court may not appoint a temporary conservator unless it has been shown by clear and

convincing evidence that (1) the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall [(1)] make a specific finding in any decree issued on the application stating why medical evidence was not required[, and (2) schedule a hearing in accordance with subsection (c) or (d) of this section, which hearing shall take place not later than seventy-two hours after the issuance of the court's decree].

[(f) Except as provided in subsection (g) of this section, a temporary conservator may not change the respondent's residence unless a court specifically finds, after a hearing, that such change is necessary.

(g) (1) If the temporary conservator determines it is necessary to cause the respondent to be placed in an institution for long-term care, the temporary conservator may make such placement after the temporary conservator files a report of such intended placement with the probate court that appointed the temporary conservator, except that if the placement results from the respondent's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the respondent would result from filing the report before making such placement, the temporary conservator shall make the placement before filing the report provided the temporary conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the temporary conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the respondent's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The temporary conservator shall give notice of the placement and a copy of such report to the respondent and any other interested parties as determined by the court.

(3) Upon the request of the respondent or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the respondent's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the respondent, either through the respondent's own estate or through private or public assistance, the court shall order that the respondent be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

[(h)](f) Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report and final accounting, if applicable and as directed by the court, with the court of [his or her] such conservator's actions as temporary conservator.

Sec. 19. Section 45a-655 of the general statutes **(Duties of conservator of the estate. Application for distribution of gifts of income and principal from the estate.)** is repealed and the following is substituted in lieu thereof:

(a) A conservator of the estate appointed under section 45a-646, 45a-650 or 45a-654 shall, within two months after the date of [his or her] the conservator's appointment, make and file in the Court of Probate, an inventory under penalty of false statement of [his or her ward] the estate of the conserved individual, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of [his or her] the conservator's appointment. Such inventory shall include the value of the [ward's] conserved individual's interest in all property in which the [ward] such individual has a legal or equitable present interest, including, but not limited to, the [ward's] the conserved individual's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the [ward] conserved individual and those members of the [ward's] conserved individual's family whom [he or she] the conserved individual has the legal duty to support and to pay the [ward's] debts, and may sue for and collect all debts due the [ward] conserved individual The conservator shall use the least restrictive means of intervention in the exercise of its duties and authorities.

(b) Any conservator of the estate of a married person may apply such portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse which the Court of Probate, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45a-177, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under section 45a-649.

(d) In the case of any person receiving public assistance, state-administered general assistance or Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by the Commissioner of Social Services. Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the [ward] conserved individual to the support of the [ward's] conserved individual's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services

pursuant to 42 USC 1396r-5(d)(2)-(4), or (2) any portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse in an amount that exceeds the amount determined allowable by the department pursuant to 42 USC 1396r-5(f)(1) and (2), notwithstanding the provisions of 42 USC 1396r-5(f)(2)(A)(iv), unless such limitations on income would result in significant financial duress.

(e) Upon application of a conservator of the estate, after hearing with notice to the Commissioner of Administrative Services, the Commissioner of Social Services and to all parties who may have an interest as determined by the court, the court may authorize the conservator to make gifts or other transfers of income and principal from the estate of the [ward] conserved individual in such amounts and in such form, outright or in trust, whether to an existing trust or a court-approved trust created by the conservator, as the court orders to or for the benefit of individuals, including the [ward] conserved individual, and to or for the benefit of charities, trusts or other institutions described in Sections 2055(a) and 2522(a) of the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts or transfers shall be authorized only if the court finds that: (1) In the case of individuals not related to the [ward] conserved individual by blood or marriage, the [ward] conserved individual had made a previous gift to that unrelated individual prior to being declared incapable; (2) in the case of a charity, either (A) the [ward] conserved individual had made a previous gift to such charity, had pledged a gift in writing to such charity, or had otherwise demonstrated support for such charity prior to being declared incapable; or (B) the court determines that the gift to the charity is in the best interests of the [ward] conserved individual, is consistent with proper estate planning, and there is no reasonable objection by a party having an interest in the [ward's] conserved individual's estate as determined by the court; (3) the estate of the [ward] conserved individual and any proposed trust of which the [ward] conserved individual is a beneficiary is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such [ward] conserved individual in accordance with such [ward's] conserved individual's established standard of living and for the support of persons the [ward] conserved individual is legally obligated to support; (4) the purpose of the gifts is not to diminish the estate of the [ward] conserved individual so as to qualify the [ward] conserved individual for federal or state aid or benefits; and (5) in the case of a [ward] conserved individual capable of making an informed decision, the [ward] conserved individual has no objection to such gift. The court shall give consideration to the following: (A) The medical condition of the [ward] conserved individual, including the prospect of restoration to capacity; (B) the size of the [ward's] conserved individual's estate; (C) the provisions which, in the judgment of the court, such [ward] conserved individual would have made if [he or she] conserved individual had been capable, for minimization of income and estate taxes consistent with proper estate planning; and (D) in the case of a trust, whether the trust should be revocable or irrevocable, existing or created by the conservator and court approved. The court should also consider the provisions of an existing estate plan, if any. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by the conservator shall be subject to continuing probate court jurisdiction in the same manner as a testamentary trust

including periodic rendering of accounts pursuant to section 45a-177. Notwithstanding any other provision of this section, the court may authorize the creation and funding of a trust that complies with section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. The provisions of this subsection shall not be construed to validate or invalidate any gifts made by a conservator of the estate prior to October 1, 1998.

Sec. 20. Section 45a-656 of the general statutes **(Duties and authorities of conservator of the person)** is repealed and the following is substituted in lieu thereof:

(a) The conservator of the person shall have only those authorities and duties expressly assigned pursuant to section 45a-650 of the general statutes and may have: (1) The duty and responsibility for the general custody of the [respondent] conserved individual; (2) the [power] authority to establish [his or her] the conserved individual's [place of abode] residence within the state, subject to the provisions of section 45a-656a of this act; (3) the [power] authority to give consent for [his or her] such individual's medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the [ward] conserved individual; and (5) the duty to take reasonable care of the [respondent's'] personal effects of such individual.[; and (6) the duty to]

(b) In carrying out the authorities and duties assigned by the Probate Court, the conservator of the person shall exercise such authorities and duties in a manner that is the least restrictive means of intervention and shall (1) assist the conserved individual in removing obstacles to independence, (2) assist the such individual in achieving self-reliance, (3) ascertain the conserved individual's views, (4) make decisions in conformance with the conserved individual's reasonable and informed expressed preferences, (5) make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved individual, and (6) make decisions in conformance with such individual's expressed health care preferences, including health care instructions and other wishes authorized in sections 19a-580e, unless otherwise provided in subsection (b) of section 19a-580e and section 19a-580g of the general statutes. The conservator shall afford the conserved individual the opportunity to participate meaningfully in decision-making in accordance with the conserved individual's abilities and shall delegate to the conserved individual reasonable responsibility for decisions affecting such individual's well-being..

(c) The conservator shall report at least annually to the [probate court which] Probate Court that appointed the conservator regarding the condition of the [respondent] conserved individual, the efforts made to encourage independence and whether appointment of a conservator is the least restrictive means of intervention for managing the conserved individual's needs. The [preceding] duties, responsibilities and [powers] authorities under this section shall be carried out within the [limitations of the] resources available to the [ward] conserved individual, either through [the ward's] the individual's own estate or through private or public assistance.

[(b)](d) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill

except under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 359.

[(c) (1) If the conservator of the person determines it is necessary to cause the ward to be placed in an institution for long-term care, the conservator may make such placement after the conservator files a report of such intended placement with the probate court that appointed the conservator, except that if the placement results from the ward's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the ward would result from filing the report before making such placement, the conservator shall make the placement before filing the report provided the conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the ward's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement and a copy of such report to the ward and any other interested parties as determined by the court.

(3) Upon the request of the ward or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the ward's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the ward, either through the ward's own estate or through private or public assistance, the court shall order that the ward be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

Sec. 21. (NEW) (Section 45a-656a. Restriction on placement of conserved individual in institution for long-term care.) (a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a conservator may not terminate a tenancy or lease of the conserved individual, sell or dispose of any real property or household furnishings of the conserved individual, or change the individual's residence unless a court finds, after a hearing, that such change is necessary or that the conserved individual agrees to such action.

(b) If the conservator determines it is necessary to cause the conserved individual to be placed in an institution for long-term care or to change the conserved individual's residence, the conservator shall file a report of the intended placement in long-term care with the Probate Court that appointed the conservator. The court shall hold a hearing to consider the report. If, after the hearing, the conservator obtains permission of the court, the conservator may make such a placement. The hearing shall be held not less than five days after the filing of the report, excluding Saturdays, Sundays and holidays, and not less than seventy-two hours before the placement in the institution for long-term care, except that if the placement results from the respondent's discharge from a hospital, the conservator may make the placement before filing the report provided the conservator (1) files the report not later than forty-eight hours, excluding Saturdays, Sundays and holidays, after making such placement, and (2) includes in the report a statement as to the hospital discharge and related circumstances requiring the placement of the conserved individual in the institution for long-term care. No such placement made before the filing of the report of the conservator shall continue unless ordered by the Probate Court after a hearing held pursuant to this section.

(c) The report filed under subsection (b) of this section shall set forth the basis for the conservator's determination, what community resources are available and have been considered to avoid the placement, and the reasons why the conserved individual's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement of the conserved individual in an institution for long-term care and a copy of such report to the conserved individual, the conserved individual's attorney, and any interested parties as determined by the court. Service shall be by first-class mail, postage pre-paid. The conservator shall provide a certification to the court that service was made in the manner prescribed by this subsection.

(d) The conserved individual may, at any time, request a hearing by the court on the individual's placement in an institution for long-term care, including the availability of a less restrictive alternative for the individual's placement. On request of the conserved individual made after the initial hearing held under subsection (b), the court shall hold a hearing on the placement not later than ten days, excluding Saturdays, Sundays, and holidays, after receipt by the court of such request. The court is not required to conduct a hearing more than three times in any twelve-month period following the hearing held under subsection (b) authorizing the initial placement, except that the court shall conduct a hearing whenever information not previously available to the court is submitted with a request for a hearing.

(e) After the initial hearing held under subsection (b), the court may hold a hearing on a conservator's report and the placement of the conserved individual in an institution for long-term care in any case even if no request for a hearing is made.

(f) If the court, after a hearing on the placement of the conserved individual in an institution for long-term care, determines that the conserved individual's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the resources available to the conserved individual, either through the conserved individual's own estate or through private or public assistance, the court shall order that the conserved individual be placed and maintained in a less restrictive and more integrated setting.

(g) A conserved individual may waive the right to a hearing required under this section only after the individual's attorney has consulted with the individual and the attorney files with the court a record of the waiver. Such a waiver must represent the individual's own wishes.

(h) For purposes of this section, an "institution for long-term care" means a facility that has been federally-certified as a skilled nursing facility, an intermediate care facility, a residential care home, an extended care facility, a nursing home, a rest home and a rehabilitation hospital or facility.

Sec. 22. Section 45a-659 of the general statutes **(Conservator of nonresident's property.)** is repealed and the following is substituted in lieu thereof:

(a) If any [person] individual not domiciled [out of] in this state, and owning real property or tangible personal property in this state is incapable of managing his or her affairs, the [court of probate] Court of Probate for the district in which the property or some part of it is situated may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person in the state where the incapable person is domiciled and after notice pursuant to section 45a-649 or such reasonable notice as the court may order, and a hearing as required pursuant to section 45a-650 appoint a conservator of the estate for the real property and tangible personal property in this state of the incapable person pursuant to section 45a-650.

(b) If a conservator of the estate has been appointed for such an incapable person in the state of such person's domicile, (1) the court may, on application of the out-of-state conservator to act as conservator for real or tangible personal property of the incapable person in this state, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the state of the incapable person's domicile, and (2) if the application is for the appointment of a person other than the out-of-state conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-state appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in an out-of-state jurisdiction includes any person serving in the equivalent capacity in such state.

(c) The conservator of the estate for the property in this state shall give a probate bond, and shall, within two months after the date of his or her appointment, make and file

in the court of probate, under penalty of false statement, an inventory of all the real property and tangible personal property in this state of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

(d) The proceeds of any sale of [either] the real or tangible personal property, or [both] the tangible personal property, itself, may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the state where the incapable person is domiciled, following the application and proceedings which are required by section 45a-635.

(e) If an application for a conservator is made pursuant to this section, the Probate Court may not proceed to act on the application until an attorney is appointed to represent the individual. An attorney shall be appointed in the manner provided in section 15 of this act.

Sec. 23. Section 45a-660 of the general statutes **(Termination of conservatorship. Review by court.)** is repealed and the following is substituted in lieu thereof:

(a)(1) A conserved individual may, at any time, petition the Court of Probate having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved individual shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Probate Court, unless the hearing is continued for good cause. If such hearing is not held in such thirty-day period, the conservatorship shall terminate. If the [court of probate] Court of Probate having jurisdiction finds a [ward] conserved individual to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of [his or her] the conserved individual's property be restored to the [ward] conserved individual. (2) If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the [ward] conserved individual, upon such conservator or person giving such probate bond, if any, as the court orders. (3) If any [ward] conserved individual having a conservator dies, [his or her] the conserved individual's property other than property which has accrued from the sale of [his or her] such individual's real property shall be delivered to [his or her] the conserved individual's executor or administrator. The unexpended proceeds of [his or her] the conserved individual's real property sold as aforesaid shall go into the hands of the executor or administrator, to be distributed as such real property would have been.

(b) (1) In any case under subsection (a) of this section the conservator shall file in the court [his or her] the conservator's final account, and the court shall audit the account and allow the account if it is found to be correct. If the [ward] conserved individual is living, the [ward] individual and [his or her] the individual's attorney, if any, shall be entitled to notice by regular mail of any hearing held on the final account. (2) The [court of probate] Court of Probate having jurisdiction shall send written notice annually to the [ward] conserved individual and [his or her] the individual's attorney that the [ward] conserved individual has a right to a hearing under this section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than thirty days from the receipt of the [application] request unless continued for cause shown.

(c) The court shall review each conservatorship [at least every three years and] no later than one year after the conservatorship was ordered and no less than every three years after such initial review. After such a review, the court shall continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the [ward] conserved individual. The conservator and a physician licensed to practice medicine in this state shall each submit a written report to the court within forty-five days of the court's request for such report. On receipt of a written report, the court shall provide a copy to the conserved individual and attorney for the conserved individual. If the [ward] conserved individual is unable to request or obtain an attorney, the court shall appoint an attorney. If the [ward] conserved individual is unable to pay for the services of the attorney, the rates of reasonable compensation of such attorney shall be established by, and the attorney shall be paid from funds appropriated to, the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such rates of compensation shall be established by the Probate Court Administrator and the attorney shall be paid from the Probate Court Administration Fund. The physician shall examine the [ward] conserved individual within the forty-five-day period preceding the date of submission of the physician's report. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court may issue an order for the disclosure of medical information required pursuant to this subsection but shall issue such an order of disclosure for the conserved individual's attorney. No later than thirty days after receipt of the conservator's report and physician's evaluation, the attorney for the conserved individual shall notify the court that the attorney has met with the conserved individual and shall inform the court whether a hearing is being requested. Nothing in this section shall prevent the conserved individual or the individual's attorney from requesting a hearing at any other time as allowed by law.

(d) If the court [determines] finds, after receipt of the reports from the attorney for the [ward] conserved individual, the physician and the conservator, [that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician] by clear and convincing evidence, that the conserved individual continues to be incapable of managing the conserved individual's affairs and that there are no less restrictive means available to assist the conserved individual in managing the individual's affairs, the court shall

continue or modify the conservatorship under the terms and conditions of appointment of a conservator under section 45a-650, as amended by this act. If the court does not make such a finding of continuing incapacity by clear and convincing evidence, the court shall terminate the conservatorship. A hearing on the condition of the conserved individual shall not be required, but the court, in its discretion, may hold such hearing. If the conserved individual, attorney or conservator requests a hearing, the court shall hold a hearing within thirty days of such request.

Sec. 24. Section 45a-662 of the general statutes **(Conveyance of property by order of court.)** of the general statutes is repealed and the following is substituted in lieu thereof:

The [court of probate] Court of Probate in which [the] a conservator [of any incapable person] has been appointed may, concurrently with courts of equity, order such conservator to convey the interest of [his ward] the conserved individual in any real property which ought in equity to be conveyed to another person.

Sec 25. Section 45a-679 of the general statutes **(Conflicts between plenary guardian, limited guardian, conservator of the estate or person and temporary conservator to be resolved by Probate Court.)** is repealed and the following is substituted in lieu thereof:

If a ward or conserved individual has both a plenary guardian or limited guardian of the person with mental retardation and a conservator of the estate or person or a temporary conservator who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the court of probate making the appointment of such guardian or conservator and such court shall, after a hearing, order the course of action which in its discretion is in the best interest of the ward or conserved individual.

Sec. 26. (NEW) (Section 45a-701. Application for writ of habeas corpus.) (a) An individual subject to guardianship or involuntary conservatorship under chapter 802h may apply for and is entitled to the benefit of the writ of habeas corpus without having previously exhausted other available remedies including, but not limited to, the right to appeal the order of guardianship or involuntary conservatorship. The question of the legality of such guardianship or involuntary conservatorship shall be determined by the court or judge issuing such writ.

(b) A writ of habeas corpus shall be directed to the guardian of the person or the estate of the ward or to the conservator of the conserved individual and if illegality or invalidity of the guardianship or involuntary conservatorship is alleged in such writ, a copy shall also be directed to the judge of the court that issued the order as to such claim.

(c) An application for a writ of habeas corpus under this section shall be brought to either the Superior Court or the Court of Probate.

(d) If such application has been brought in the Court of Probate, the Probate Court Administrator shall appoint a three-judge court from among the several judges of probate

to hear such application. Such three-judge court shall consist of judges who are attorneys-at-law admitted to practice in this state. The judge of the Court of Probate who issued the order shall not be a member of the three-judge court. No such application shall be denied without the vote of at least two judges of the three-judge court. The judges of such court shall designate a chief judge from among their members. The three-judge court shall cause a recording to be made of all proceeding held under this section. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator. All records for any case before the three-judge court shall be maintained in the Probate Court in which the conservator or guardian was appointed.

(e) Hearing under this section shall be heard not later than ten days, excluding Saturdays, Sundays and holidays, after return of service of the writ.

(f) If the court or judge before whom such a writ is brought decides that the involuntary representation or guardianship is not illegal, such decision shall be considered a final judgment and subject to appeal.

(g) If the court or judge before whom such case is brought decides that the involuntary representation or guardianship is not illegal, such decision shall not bar issuance of such a writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was conserved or if such application is based on a ground different from that relied on in an earlier application. Such writ may be applied for by an individual subject to guardianship or involuntary conservatorship or on the behalf of such individual by any relative, friend or person interested in such individual's welfare.

(h) An appeal to the Superior Court of a decision rendered by a three-judge court under this section shall be filed in the judicial district in which the Probate Court that issued the order appointing a guardian or involuntary conservator is located. Such appeal shall be heard not later than thirty days of the return of service of the appeal.

Sec. 27. Section 45a-663 of the general statutes **(Compensation of conservator if [ward] <u>conserved individual</u> unable to pay.)** is repealed and the following is substituted in lieu thereof:

If a [ward] <u>conserved individual</u> is unable to pay for the services of a conservator appointed pursuant to the provisions of sections 45a-593 to 45a-700, inclusive, the reasonable compensation of such conservator shall be paid from the Probate Court Administration Fund established under section 45a-82, pursuant to rules and regulations and at rates established by the Probate Court Administrator.

Sec. 28. (NEW) (Sec. 17a-716. Writ of habeas corpus.) An individual confined in a hospital or inpatient treatment facility for treatment of alcohol or drug dependency in this state may seek a writ of habeas corpus in the Superior Court. The question of the legality of such confinement shall be determined by the court or judge issuing such writ. The writ shall be directed to the superintendent or director of the hospital or treatment facility and, if illegality or invalidity of the commitment is alleged in such writ, a copy shall also be directed to the judge of the committing court as to such claim. Such judge

shall be represented by the state's attorney for the judicial district in which such committing court is located. If the court or judge before whom such case is brought decides that the confinement is not illegal, such decision shall not bar issuance of such writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was confined. Such writ may be sought by the confined individual or on behalf of the individual by any relative, friend or person interested in the individual's welfare. Court fees may not be charged against the superintendent or director of the hospital or the judge.

Sec. 29. Section 49-11 of the general statutes **(Release of mortgage by executor, administrator, spouse, next of kin, guardian, conservator or other suitable person.)** is repealed and the following is substituted in lieu thereof:

The executor of the will or administrator of the estate of any deceased mortgagee, or the spouse or next of kin, or other suitable person whom the court [deems] considers to have a sufficient interest, to whom a decree is issued under section 45a-273, and any guardian [or conservator] whose ward or conservator whose or conserved individual as defined in section 45a-644, as amended, is a mortgagee, may, on the payment, satisfaction or sale of the mortgage debt, release the legal title to the party entitled thereto.

Sec. 30. Section 12-45 of the general statutes **(Return to assessors of personalty in trust.)** is repealed and the following is substituted in lieu thereof:

Each sole trustee residing in this state, having in his hands personal property liable to taxation belonging to the trust estate, shall make return thereof to the assessors of the town where he resides. If such personal property is in the hands of more than one trustee, if they all reside in the same town, they shall cause such return to be made by one of their number in such town; if they do not all reside in the same town, they shall cause such return to be made by one of their number, residing in the town in which the affairs of such trust are managed and administered, to the assessors of such town; but, if none of such trustees resides in such town, they shall designate one of their number who shall make such return to the assessors of the town where he resides. Each guardian or conservator shall make return of the personal estate of [his] the guardian's ward or the conservator's conserved individual to the assessors of the town in which such ward or conserved individual resides.

Sec. 31 Section 19a-580e of the general statutes **(Conservator's duty to comply with [ward's] conserved individual's health care instructions. Precedence of health care representative's decisions. Exceptions.)** is repealed and the following is substituted in lieu thereof:

(a) Except as authorized by a court of competent jurisdiction, a conservator shall comply with a [ward's] conserved individual's individual health care instructions and other wishes, if any, expressed while the [ward] conserved individual had capacity and to the extent known to the conservator, and the conservator may not revoke the [ward's]

conserved individual's advance health care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health care decision of a health care representative takes precedence over that of a conservator, except under the following circumstances: (1) When the health care decision concerns a person who is subject to the provisions of section 17a-566, 17a-587, 17a-588 or 54-56d; (2) when a conservator has been appointed to a [ward] conserved individual who is subject to an order authorized under subsection (e) of section 17a-543, for the duration of the [ward's] conserved individual's hospitalization; or (3) when a conservator has been appointed to a [ward] conserved individual subject to an order authorized under section 17a-543a.

Sec. 32. Sections 45a-191 **(Interest of appellant to be stated.)** and 45a-192 **(Order of notice.)** of the general statutes are repealed.

Sec. 33. This act shall take effect on October 1, 2007.

TESTIMONY

OF

THE HONORABLE DEBORAH M. PEARL

PROBATE JUDGE, **DISTRICT OF ESSEX**

TO

JOINT COMMITTEE ON JUDICIARY

PUBLIC HEARING

MARCH 30, 2007

SB 1454, 1453, 1439, 1438, 1437 HB 7382

Senator MacDonald, Representative Lawlor and distinguished members of the Judiciary Committee. My name if Judge Deborah M. Pearl and I have been probate judge in the Essex Probate Court for 27 years. I am here today to speak to you about the probate bills under discussion in your committee.

S.B. No. 1272 (RAISED) AN ACT CONCERNING ADMINISTRATION OF THE COURTS OF PROBATE AND THE DUTIES OF THE PROBATE COURT ADMINISTRATOR.

I **OPPOSE** THIS BILL FOR THE FOLLOWING REASONS:

The Legislative Program Review and Investigation Committee made final recommendations regarding the probate courts and the probate court administrator. Bill 5391 was introduced that embodied the recommendations of the committee. Bill 5391 was referred to the Judiciary Committee and never went anywhere.

The President of the Probate Assembly along with over 30 probate judges formed an Ad Hoc committee to meet the terms of the recommendations of the Program Review and Investigations Committee. For the first time in many years the Probate Assembly has come to consensus and formulated a reform plan encompassing many of the recommendations of the Program Review and Investigation Committee. The Probate Assembly reform plan involves enhanced higher lever education programs, minimum court standards which include all courts to be open a minimum of 20 hours per week. The Ad Hoc committee is awaiting final results of a clerk salary study being performed by a professional consulting firm. A judicial salary study is to follow. Attached to my testimony is the Probate Assembly Ad Hoc committee reform plan which received an approved consensus from the Probate Assembly.

Bill 1272 is essentially the same proposed legislation that Probate Court Administrator Lawlor submitted previously. Bill 1272 eliminates any accountability of the Probate Court Administrator to the General Assembly by taking away the requirement that the Probate Administrator comply with the Administrative Procedures Act. **THERE ARE NO CHECKS AND BALANCES FOR THE PROBATE COURT ADMINISTRATOR.**

SEC. 3. (NEW) has the Probate Court Administrator creating a Probate Court Review Panel to review actions or inactions of judges of probate. This panel is a duplication of what is already in existence. The Probate Assembly Ad Hoc committee is presently working with the Executive Director of the Council on Probate Judicial Conduct to explore utilizing the council for the exact purpose of pursuing offending judges. A member of the Council on Probate Judicial Conduct made a presentation to the Ad Hoc committee. The Probate Court Review Panel will become another bureaucratic layer allowing the probate court administrator a forum in which to wield power without oversight from any legislative body

Sec.4. contains provisions which are already established regarding the unavailability of probate judges. C.G.S. 45a-120 states "If any judge of probate declines to act or is disqualified from acting as judge of probate, OR IS ABSENT OR UNABLE TO DISCHARGE HIS DUTIES, of if the office of judge of probate in any district becomes vacant, the probate court administrator shall cite any judge of probate to act as judge of probate in the district..." I agree that if the probate court administrator has exhausted his regulatory powers in trying to get a judge of probate to respond to their statutory duties that he should have some type of sanctioning ability. However, that sanctioning ability could come from the Council on Probate Judicial Conduct. The Probate Assembly Ad Hoc committee is presently exploring

utilizing the council for that purpose. Another new layer of bureaucracy is imprudent until our Probate Assembly Ad Hoc committee, co-chaired by the president judge finishes examining this issue.

BILL 1272 is bad because of the following provisions:

1. Eliminate any accountability to the General Assembly by removing the requirement that the Administrator comply with the Administrative Procedures Act.
2. Give the Administrator the power to appoint non-judges to hear cases in place of duly elected judges.
3. Give the Administrator the power to determine judges' compensation.
4. Remove the requirement that the Administrator report inadequate court facilities to the General Assembly and give the Administrator the power to punish judges if a town fails to provide appropriate court facilities.
5. Give the Administrator the power to micro-manage all 117 local probate courts
6. Give the Administrator the power to force a court to open even when the town hall is closed.
7. Give the Administrator the power to force the reassignment or transfer of cases from an errant judge.

The Probate Court Administrator is asking to be exempt from accountability. The Probate Assembly is diligently working together to respond to this legislative body.

S.B. No. 1437 (RAISED) AN ACT CONCERNING THE DATE OF BIRTH OF ADOPTED PERSONS BORN OUTSIDE OF THE COUNTRY AND NOTICE PROVIDED BY THE COUNCIL ON PROBATE JUDICIAL CONDUCT. No objection.

S.B. No. 1438 (RAISED) AN ACT CONCERNING NOTICE OF CERTAIN PROBATE COURT HEARINGS AND THE FILING OF CERTAIN REPORTS.

Comment: Sec. 4. (b), (c), (d) reduces due process for notice provisions from certified mail to regular first class mail.

Sec 9. Subsection (g) of section 45a-92: **OPPOSE** changing filing and payment dated from first day of April to MARCH. To date the Probate Court Administrator's office is undergoing problems with electronic tally system and does not get final tally numbers to the probate courts in a timely manner. Final tally numbers continue to be problematic due to inadequacies with probate administration equipment and collection of data from the courts.

S.B. No. 1439 (RAISED) AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS. SUPPORT with exception to the following:

OPPOSE changes TO SEC 2. SECTION 45A-649 REPEALED AND SUBSTITUTION OF CITATION SERVED ON PARTIES AT LEAST (FROM SEVEN) TO FOURTEEN DAYS BEFORE HEARING. Doubling the notice time allows disabled individuals to remain vulnerable and a danger to themselves and others. Allow the probate court to determine that if this is a serious situation that requires quick action that the notice could be served, in the opinion of the probate court, within seven days. Also this section refers to section 17a-543 or 17a-543a which involves medication and psychiatric treatment. The respondents involved need quick action. If not immediately critical then court should allow fourteen days notice provision.

OPPOSE deleting the probate court's ability to waive medical evidence, especially in an emergency situation which allows a mentally disabled individual to remain vulnerable and a danger to themselves or others. Many times there are other reliable sources such as social workers and case managers who may have direct knowledge of the individual's situation.

OPPOSE SECTION 4. SECTION 45A-650 REPEALED AND FOLLOWING SUBSTITUTED; (I) UPON REQUEST ....OR ANY INTERESTED PARTY..COURT SHALL CLARIFY THE FINDING OF FACT...I believe this is a violation of the right to privacy of the respondent. The respondent or their attorney should be the only party's privy to the court's specific findings clarification.

S.B. No. 1453 (RAISED) AN ACT CONCERNING THE TRANSFER OF AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.

OPPOSE THIS BILL IN ITS ENTIRITY. All probate judges should be trained equally to hear all matters within the probate court jurisdiction. The Probate Court Administrator has been establishing special training courses for hand picked judges thereby leaving other probate judges out of the education loop. The Probate Assembly Ad Hoc Committee in its deliberations and recommendations has agreed that all probate judges should have a high level of continuing education. Section 1. (2) the transfer of an application for involuntary representation to another judge of probate appointed by the probate court administrator would allow for judge shopping and deny the people of each town in Connecticut of their probate judge elected by that town. Probate Judges are elected officials by the residents of their town(s) and as such owe a statutory duty and responsibility to their constituents.

Local probate courts handle conservatorships effectively and efficiently. The problems being discussed are sensational cases made sensational by the press and other entities. I agree with many of the increased provisions for higher quality evidentiary hearings and recording of conservator hearings in S.B. 1439. However the transfer of a case from the probate court to Superior Court is unnecessary and will put vulnerable individuals in an even more difficult situation.

The municipalities in Connecticut want their probate courts. They support the probate courts by providing space in their municipal buildings or pay for rent for their probate courts. According to the report of the Probate Assembly Ad Hoc committee, if a town did not want to provide the statutory requirements for a probate court then actions could be taken to require consolidation. From information gathered thus far by the Ad Hoc committee towns want their own probate courts and are willing to provide financial support to keep them.

S.B. No. 1454 (RAISED) AN ACT CONCERNING THE REQUIREMENTS FOR FILING AN AFFIDAVIT IN LIEU OF ADMINISTRATION IN THE PROBATE OF A SMALL ESTATE.

I **SUPPORT** THIS BILL.

H.B. No. 7382 (RAISED) AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR PROBATE COURT JUDGES AND EMPLOYEES.

I **SUPPORT** THIS BILL. Probate Judges are elected state officials and should be covered under the State of Connecticut umbrella as are all other state elected officials The Probate Assembly is participating with new reform recommendations improving court standards and judicial education.

JUDICIARY COMMITTEE - MARCH 30, 2007

TESTIMONY IN SUPPORT OF: S.B. 1272
S.B. 1439 (SUBSTITUTE IS ATTACHED)
S.B. 1453

Members of the Judiciary Committee: My name is Marilyn Denny, I am a staff attorney at Greater Hartford Legal Aid in Hartford, Connecticut. I have worked with the elderly citizens of Connecticut for almost 20 years and have participated in drafting legislation which moved Connecticut into compliance with federal law concerning nursing home residents rights.
Today, I support legislation which will provide essential protections for the elderly citizens of Connecticut and which will bring Connecticut into compliance with standards recommended by the American Bar Association, by the National Conference of Commissioners on Uniform State Laws for a Uniform Guardianship and Protective Proceedings Act (passed in 1997), and other organizations. The protections include:

Facilitate Appeal to Superior Court: The changes recommended would expedite the processing of probate appeals, reduce cost, require a record, eliminate de novo review and secure judicial review of probate decisions which should have a remedial effect on improper practices. Issues of standing and aggrievement will be subsumed into the hearing on the merits. Appellants and probate judges alike will be relieved of the motion for permission to appeal requirements.

Adapt Definitions from the Uniform Guardianship and Protective Proceedings Act, which comply with the requirements of the Americans with Disabilities Act: Amendments define the least restrictive form of intervention and redefine incapacity to focus on the individual's functioning instead of reacting to a generic designation of disability.

Notice of Hearing: Mandate hearing notice to potential wards which describes the implications of conservatorship proceedings, and use language adapted from other states which better inform the person of the potential consequences of the hearing.

Imposition of the Least Restrictive Conservatorship Necessary: Require the court to honor previously executed advanced directives, to consider the person's express preferences in deciding whether to appoint and in selecting a conservator, and require that conservators try to restore the person to capacity, if possible and to consider the conserved person's preferences- past and present, when possible.

Right to An Attorney of One's Choice and to Due Process: Require that conservatorship proceedings be conducted on the record and adhere to the rules of evidence, enable the potential ward to retain counsel of his or her choice.

Duties of the Conservator of the Person: Limit the duties of the conservator of those expressly assigned by the Probate judge.

Conservator Statutes Revision Committee
Connecticut

March 22, 2007
Draft bill no. 7

SB 1439

Section 1. Section 45a-132a of the general statutes **(Examination of incapable party. Expense.)** is repealed and the following is substituted in lieu thereof:

In any matter before a court of probate in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state. A conserved individual or the respondent to an application for involuntary representation made under section 45a-648, as amended, and temporary representation under section 45a-654, as amended, may refuse to undergo an examination ordered by the court under this section. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such examination or the estate of the alleged incapable in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

Sec. 2. Section 45a-186 of the general statutes **(Appeals from probate.)** is repealed and the following is substituted in lieu thereof:

(a) Any person aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, may, not later than forty-five days after mailing of such order, denial or decree for matters heard under sections. 45a-593, 45a-594, 45a-595, 45a-597, 45a-644 to 45a-677, inclusive, and 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of such order, denial or decree for all other matters in the Court of Probate, appeal therefrom to the Superior Court [in accordance with subsection (b) of this section. Except in the case of an appeal by the state, such person shall give security for costs in the amount of one hundred fifty dollars, which may be paid to the clerk, or a recognizance with surety annexed to the appeal and taken before the clerk or a commissioner of the Superior Court or a bond substantially in accordance with the bond provided for appeals to the Supreme Court.] Such an appeal shall be commenced by filing a complaint in the Superior Court in the judicial district in which such Probate Court is located, except that (1) an appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of subsection 12-395 shall be filed in the judicial district of Hartford and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the Superior Court for juvenile matters having jurisdiction over matters arising in such probate district. The complaint shall state the reasons for appeal. A copy of the order, denial or decree appealed from shall be attached thereto. Appeals from any decision

rendered in any case after a [record] recording is made of the proceedings under sections 17a-498, 17a-685, 45a-650, 51-72 and 51-73 shall be on the record and shall not be a trial de novo.

(b) [Any such appeal shall be filed in the superior court for the judicial district in which such court of probate is located except that (1) any appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of section 12-395, shall be filed in the judicial district of Hartford and (2) any appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters arising in such probate district.] A person appealing pursuant to this section shall serve a copy of the complaint on the Probate Court that rendered the order, denial or decree appealed from and on all interested parties. Failure to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50 of the general statutes, service of the copy of the complaint shall be by state marshal, constable, or an indifferent person. Service shall be in hand or by leaving a copy at the Probate Court that rendered the order being appealed, or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with said probate court, except that service on a respondent or conserved individual in an appeal from an action under chapter 802h, part IV of the general statutes shall be in hand by a state marshal, constable or an indifferent person.

(c) Not later than fifteen days after filing an appeal under this section, the person appealing shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service and (2) a statement of the date and manner in which a copy of the complaint was served on the Probate Court and each interested party.

(d) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.

(e) A hearing in an appeal from probate proceedings under sections 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703 and 45a-717 shall commence, unless a stay has been issued pursuant to subsection (f) of this section, not later than ninety days after the appeal has been filed.

(f) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Probate Court or the Superior Court. Filing of the motion with the Probate Court shall not preclude action by the Superior Court.

(g) Nothing in this section shall prevent use by an individual aggrieved under subsection (a) of this section of a petition for a writ of habeas corpus, a petition for termination of an involuntary conservatorship or other available remedy.

Sec. 3. (NEW) (Section 45a-186a. Record. Hearing.) (a) In an appeal from an order, denial or decree of the Probate Court made after a hearing that is on the record, the Probate Court, not later than thirty days after service of the appeal under section 45a-186, as amended by this act, or within such further time as may be allowed by the Superior Court, shall transcribe any portion of the recording of the proceedings that has not been transcribed. The Probate Court shall transmit to the Superior Court the original or a certified copy of the entire record of the proceeding from which the appeal was taken. The record shall include, but not be limited to, the findings of fact and conclusions of law, separately stated, of the Probate Court.

(b) An appeal from an order, denial or decree made after a hearing on the record shall be conducted by the Superior Court, including a state referee appointed under section 51-50*l* of the general statutes, without a jury. Such an appeal shall be confined to the record. If alleged irregularities in procedure before the Probate Court are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the Superior Court. The court, on request, shall hear oral argument and receive written briefs.

Sec. 4. (NEW) (Section 45a-186b. Action of Superior Court on appeal) In an appeal taken under section 45a-186, as amended, from a matter heard on the record in the Probate Court, the Superior Court shall not substitute its judgment for that of the Probate Court as to the weight of the evidence on questions of fact. The Superior Court shall affirm the decision of the Probate Court unless the court finds that substantial rights of the person appealing have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) in violation of the federal or state constitutions or statutes of this state, (2) in excess of the statutory authority of the probate court, (3) made on unlawful procedure, (4) affected by other error of law, (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Superior Court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment that modifies the Probate Court order, denial or decree or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

Sec. 5. (NEW) (Section 45a-186c. Costs. Waiver.) (a) In an appeal taken under 45a-186, as amended by this act, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that such costs are allowed in judgments rendered by the Superior Court.

(b) If the appellant claims that such appellant cannot pay the costs of an appeal taken under section 45a-186, as amended, the appellant shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such costs, including the requirement of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render judgment on the application for waiver, which judgment shall contain a

statement of the facts found by the court and the court's conclusions based on the facts found. The filing of the application for the waiver shall toll the time limit for the filing of an appeal until such time as a judgment on such application is rendered. A fiduciary acting on an order of the court made after expiration of the period of appeal shall not be liable for actions made in good faith unless such fiduciary has actual notice of the tolling of the appeal period.

Sec. 6. Section 45a-199 of the general statutes **("Fiduciary" defined.)** is repealed the following is substituted in lieu thereof:

As used in sections 45a-143, 45a-152, 45a-202 to 45a-208, inclusive, [and] 45a-242 to 45a-244, inclusive, and section 5 of this act, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

Sec. 7. Section 45a-487c of the general statutes **(Representation by court-appointed conservator or guardian, agent, trustee, executor or administrator, or parent.)** is repealed and the following is substituted in lieu thereof:

In connection with trust matters, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: (1) A court-appointed conservator or guardian of the estate may represent and bind the estate that the conservator or guardian controls; (2) a court-appointed conservator or guardian of the person may represent and bind the ward or conserved individual if a conservator or guardian of the ward's or conserved individual's estate has not been appointed; (3) an agent having authority to do so may represent and bind the principal; (4) a trustee may represent and bind the beneficiaries of the trust; (5) an executor or administrator of a decedent's estate may represent and bind persons interested in the estate; and (6) if a conservator or guardian has not been appointed, a parent may represent and bind the parent's minor or unborn child.

Sec. 8. Subsection (b) of section 45a-593 of the general statutes **(Administrator of Veterans' Affairs to be party in interest.)** is repealed and the following is substituted in lieu thereof:

(b) The Administrator of Veterans' Affairs or [his] such administrator's successor shall be an interested party in the administration of the estate of any ward or conserved individual on whose account the benefits are payable or whose estate includes assets derived from benefits paid by the Veterans' Administration, its predecessor or successor.

Sec. 9. Section 45a-595 of the general statutes **(Investment of funds in insurance and annuity contracts by conservator or guardian of estate.)** is repealed and the following is substituted in lieu thereof:

Upon application of a conservator or the guardian of the estate of a ward or conserved individual, the [court of probate] Court of Probate may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company authorized to conduct business in this state, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested in it.

Sec. 10. Section 45a-644 of the general statutes **(Definitions.)** is repealed and the following is substituted in lieu thereof:

For the purposes of sections 45a-644 to [45a-662] 45a-663, inclusive, the following terms shall have the following meanings:

(a) "Conservator of the estate" means a person, a municipal or state official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of section 45a-654, as amended.

(b) "Conservator of the person" means a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by the Probate Court under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of section 45a-654, as amended.

(c) "Incapable of caring for one's self" or "incapable of caring for himself or herself" means that an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health] that results in such individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to meet essential requirements for personal needs.

(d) "Incapable of managing [his or her] the individual's affairs" means that [a person] an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from performing] that results in such

individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to perform the functions inherent in managing [his or her] the individual's affairs, and the [person] individual has property [which] that will be wasted or dissipated unless [proper] adequate property management is provided, or that funds are needed for the support, care or welfare of the [person] the individual or those entitled to be supported by [that person] the individual and that the [person] individual is unable to take the necessary steps to obtain or provide funds [which are] needed for the support, care or welfare of the [person] the individual or those entitled to be supported by such [person] individual.

(e) "Involuntary representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the Court of Probate that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

(f) "Respondent" means an adult person for whom an application for involuntary representation has been filed or an adult person who has requested voluntary representation.

(g) "Voluntary representation" means the appointment of a conservator of the person or estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing [his or her] the individual's affairs or incapable of caring for himself or herself.

(h) ["Ward"] "Conserved individual" means [a person] an individual for whom involuntary representation [is granted] or voluntary representation is appointed under sections 45a-644 to [45a-662] 45a-663, inclusive.

(i) "Personal needs" means needs for an individual such as, but not limited to, food, clothing, shelter, health care and safety.

(j) "Property management" means actions to obtain, administer, manage, protect and dispose of real and personal property, intangible property, business property, benefits and income and to deal with financial affairs.

(k) "Least restrictive means of intervention" means intervention for a conserved individual sufficient to provide, within the resources available to the conserved individual, either from the conserved individual's own estate or from private or public assistance, for a conserved individual's personal needs or property management while affording the conserved individual the greatest amount of independence and self determination.

Sec. 11. (NEW) (Section 45a-644a. Recording of probate proceedings.) A Court of Probate shall cause a recording to be made of all proceedings held under sections 45a-644 to 45a-663, inclusive. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator.

Sec. 12. Section 45a-645 of the general statutes **(Naming of own conservator for future incapacity.)** is repealed and the following is substituted in lieu thereof:

(a) Any [person] individual who has attained at least eighteen years of age, and who is of sound mind, may designate in writing a person or persons whom [he] such individual desires to be appointed as conservator of his person or estate or both, if [he] such individual is thereafter found to be incapable of managing his affairs or incapable of caring for one's self.

(b) The designation shall be executed, witnessed and revoked in the same manner as provided for wills in sections 45a-251 and 45a-257; provided, any person who is so designated as a conservator shall not qualify as a witness.

(c) Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of section 45a-650, if appointed thereafter as a conservator.

Sec. 13. Section 45a-648 of the general statutes **(Application for involuntary representation. Penalty for fraudulent or malicious application or false testimony.)** is repealed and the following is substituted in lieu thereof:

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing [his or her] the respondent's affairs or incapable of caring for [himself or herself] the respondent and stating the reasons for the alleged incapability. The application shall be filed in the [court of probate] Court of Probate in the district in which the respondent resides, [or has his domicile] is domiciled or is located at the time of the filing of the application.

(b) An application for appointment of a conservator for a non-domiciliary of the state made pursuant to subsection (a) of this section, shall not be granted unless the court finds (1) the respondent is presently located in the probate district in which the application is filed; (2) the petitioner has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the respondent has been provided with an opportunity to return to the respondent's place of domicile, including providing the financial means as available to the conserved individual to return to such individual's place of domicile and has declined to return or the petitioner has made reasonable but unsuccessful efforts to return the respondent or conserved individual to such respondent's or such individual's place of domicile; and (4) the requirements of this chapter for the appointment of an involuntary conservator are met.

(c) If, subsequent to the appointment of a conservator for a non-domiciliary of the state, the non-domiciliary becomes domiciled in this state, the provisions of this section no longer apply.

(d) Appointment of a conservator for a non-domiciliary made under subsection (b) of this section shall be reviewed by the court every sixty days. The appointment of such a conservator shall expire sixty days after the date of such appointment or the most recent review ordered by the court, whichever is later, unless the court finds (1) the conserved individual is presently located in the state; (2) the conservator has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the conserved individual has

been provided with an opportunity to return to such individual's place of domicile and has declined to return or the conservator has made reasonable, but unsuccessful efforts, to return the conserved individual to such individual's place of domicile including providing the financial means as available to the conserved individual to return to such individual's place of domicile; and (4) all other requirements of this chapter for the appointment of an involuntary conservator are met. As part of its review, the court shall receive and consider reports from the conservator and from the attorney for the conserved individual regarding the requirements of this subsection.

(e) [Any person who] A person is guilty of fraudulent or malicious application or false testimony when such person wilfully files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator or any person who conspires with another person to file or cause to be filed such an application or any person who wilfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to [45a-662] 45a-663, inclusive.[, shall be fined not more than one thousand dollars or imprisoned not more than one year or both.] Fraudulent or malicious application or false testimony is a class D felony.

Sec. 14. Section 45a-649 of the general statutes **(Notice of hearing. [Appointment of attorney.])** is repealed and following is substituted in lieu thereof:

(a) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least [seven] ten days before the hearing date, or in the case of applications made pursuant to sections 17a-543 and 17a-543a at least seven days before the hearing, which date shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. Notice of the hearing shall be sent within thirty days after receipt of the application. (1) The court shall direct that personal service be made, by a state marshal, constable or an indifferent person, upon the following: [(A)] The respondent, [except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this section; (B)] the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin of such respondent. (2) The court shall order such notice as it [directs] considers appropriate, including to the following: (A) The applicant; (B) the person in charge of welfare in the town where the respondent is domiciled or resident and if there is no such person, the first selectman or chief executive officer of the town if the respondent is receiving assistance from the town; (C) the Commissioner of Social Services, if the respondent is in a state-operated institution or receiving aid, care or assistance from the state; (D) the Commissioner of Veterans' Affairs if the respondent is receiving veterans'

benefits or the Veterans' Home, or both, if the respondent is receiving aid or care from such home, or both; (E) the Commissioner of Administrative Services, if the respondent is receiving aid or care from the state; (F) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives; (G) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution. (3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified. (4) Failure to give notice to the respondent under the provisions of subdivision (1) of this subsection and of subsection (b) of this section shall deprive the court of jurisdiction to consider such application.

(b) [(1)] The notice required by subdivision (1) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, [and] (C) the time and place of the hearing and (D) that the respondent has a right to be present at the hearing and has a right to be represented by an attorney of the respondent's choice at [his or her own] the respondent's expense. The notice shall include a statement in at least twelve-point type that substantially conforms to the following:

"Possible consequences of the appointment of a conservator

This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted, you will lose some of your rights.

A permanent conservator can be appointed only after a court hearing. You have a right to attend the hearing. If you are not able to get to the court, the hearing can be moved to a convenient location, even to where you are residing.

You should get an attorney to represent you at the hearing. If you are unable to obtain an attorney to represent you, the court will appoint an attorney for you. If you are unable to afford the attorney, the court will pay attorney fees as allowed by court regulation. Even if you qualify for payment of an attorney, you may choose your own attorney if she or he will accept the fee rate approved by the state of Connecticut.

If, after a hearing, the court decides that you lack the ability to care for yourself or pay your own bills, the court may review any alternative plans you have to get assistance to handle your own affairs. If the court decides that there are no adequate alternatives, the court may appoint a conservator and assign the conservator some or all of the duties listed below. While the purpose of a conservator is to help you, you should be aware that appointment of a conservator limits your rights. Among the areas that may be affected are:

- Accessing your money
- Deciding where you live
- Making medical decisions
- Paying your bills
- Planning a budget
- Managing your property

You also have a right to participate in the selection of your conservator. If you have already designated a conservator or if you inform the court of your choice for a conservator, the court must honor your request. The court may refuse your request only if the court decides that the person designated by you is not appropriate.

The conservator appointed for you could be a lawyer, a public official or someone whom you did not know before the appointment. The conservator will be required to make regular reports to the court about you. The conservator may charge you a fee, supervised by the court, for being your conservator."

(c) The notice required by subdivision (2) of subsection (a) of this section shall state only that appointment of a conservator is being sought, the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

(d) If the respondent is unable to request or obtain [counsel] an attorney for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(e) If the respondent notifies the court in any manner that [he or she] the respondent wants to attend the hearing on the application but is unable to do so [because of physical incapacity], the court shall schedule the hearing on the application at a place [which] that would facilitate attendance by the respondent [but if not practical, then the judge shall visit the respondent, if he or she is in the state of Connecticut, before the hearing. Notice to all other persons required by this section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing].

Sec. 15. (NEW) (Section 45a-649a. Right to attorney.) (a) An individual subject to an application for involuntary representation or subject to proceedings subsequent to an appointment of an involuntary conservator shall have the right to be represented by an attorney of the individual's choice at the expense of the individual or, if the individual is indigent, within the payment guidelines of the Probate Court.

(b) If the court finds the respondent or conserved individual indigent or otherwise unable to pay for an attorney, the court shall appoint an attorney for the respondent or conserved individual unless the respondent refuses to be represented by an attorney and the court finds that the respondent or conserved individual understands the nature of the refusal. The court shall appoint an attorney from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations promulgated by the administrator under section 45a-77 of the general statutes.

(c) An attorney appointed pursuant to this section shall represent the respondent or conserved individual in proceedings under sections 45a-644 to section 45a-663, inclusive, of the general statutes, and shall consult with the conserved individual regarding bringing an appeal to the Superior Court under title 45a of the general statutes. If requested to do so by the conserved individual, the attorney shall assist in the filing and commencing of an appeal to the superior court. Assistance in filing an appeal shall not obligate the attorney to appear in or prosecute the appeal. A conservator may not deny the conserved individual access to the individual's resources needed for an appeal.

(d) Nothing shall impair, limit or diminish the right of a conserved individual or respondent to replace the attorney for such individual with another attorney whom such individual selects in accordance with the provisions of this section. Fees of an attorney chosen by the conserved individual shall be approved by the Probate Court or, if an appeal is taken, by the Superior Court.

(e) If the respondent or conserved individual is indigent, an attorney appointed under this section shall be paid a reasonable compensation. Rates of compensation for such appointed attorneys shall be established by the Office of the Probate Court Administrator. Such compensation shall be paid from funds appropriated to the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be paid from the Probate Court Administration Fund.

(f) An attorney representing an individual subject to proceedings under chapter 802h shall not accept appointment as guardian ad litem or conservator of the person or estate for the same individual, unless such attorney has been nominated by the respondent or conserved individual pursuant to section 45a-645, as amended, or similar instrument, including, but not limited to, a trust or an advance directive pursuant to section 19a-580e or 19a-580g, or is nominated by the respondent or conserved individual pursuant to section 45a-650, as amended.

(g) An attorney for the respondent or conserved individual, on presentation of proof of authority, shall have access to all information pertinent to proceedings under title 45a of the general statutes, including immediate access to medical records available to the respondent's treating physician.

Sec. 16. Section. 45a-650 of the general statutes (Hearing. [Medical information.] Evidence. Appointment of conservator. Limitation re powers and duties.) is repealed and the following is substituted in lieu thereof:

(a) At any hearing for involuntary representation, the court shall require clear and convincing evidence that (1) it has jurisdiction, (2) the respondent has been given notice as required by section 45a-648, as amended by this act, and (3) before receiving evidence regarding the condition of the respondent, the respondent is represented by an attorney or the respondent has waived the right to be represented by an attorney.

(b) The rules of evidence promulgated for the Superior Court shall apply to proceedings pursuant to chapter 802h, part IV of the general statutes. Testimony at a hearing held pursuant to this section shall be given under oath or affirmation. The respondent has the right to attend any hearing held under this section.

(c) After making the findings required by subsection (a) of this section, the court shall receive evidence regarding the respondent's condition, the capacity of the respondent to care for one's self or manage the respondent's affairs, and the ability of the respondent to meet his or her needs without appointment of a conservator.[, including a written report or testimony by] Unless waived by the court pursuant to this subsection, evidence shall be introduced from one or more physicians licensed to practice medicine in the state who have examined the respondent within [thirty] forty-five days preceding the hearing. The [report or testimony] evidence shall contain specific information regarding the [disability and the extent of its incapacitating effect] respondent's condition, and the effect of the condition on the respondent's ability to care for one's self or to manage the respondent's affairs. The court may also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, reports from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court [deems] considers qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or [his or her] the respondent's refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the court shall make a specific finding in any decree issued on the [petition] application stating why medical evidence was not required. [In any matter in which the Commissioner of Social Services seeks the appointment of a conservator pursuant to chapter 319dd and represents to the court that an examination by an independent physician, psychologist or psychiatrist is necessary to determine whether the elderly person is capable of managing his or her personal or

financial affairs, the court shall order such examination unless the court determines that such examination is not in the best interests of the elderly person. The court shall order such examination notwithstanding any medical report submitted to the court by the elderly person or the caretaker of such elderly person.] Any [medical report] hospital, psychiatric and medical record or report filed with the court pursuant to this subsection shall be confidential.

[(b)] (d) Upon the filing of an application for involuntary representation pursuant to section 45a-648, as amended, the court [may] shall issue an order for the disclosure of the medical information required pursuant to [subsection (a) of] this section, to the respondent's attorney and, upon request, to the respondent. The court may issue an order for the disclosure of such medical information to other individuals as the court determines necessary.

[(c)] (e) Notwithstanding the provisions of section 45a-7, the court may hold the hearing on the application at a place [within the state] other than its usual courtroom if it would facilitate attendance by the respondent.

[(d)] (f) If the court finds by clear and convincing evidence that the respondent is incapable of managing [his or her] the respondent's affairs and that the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in managing the respondent's affairs, the court [shall] may appoint a conservator of [his or her] the respondent's estate unless it appears to the court that such affairs are being managed [properly] adequately or can be managed adequately without the appointment of a conservator. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself and that appointment of a conservator is the least restrictive means of intervention available to assist the respondent in caring for himself or herself, the court [shall] may appoint a conservator of his or her person unless it appears to the court that the respondent is being cared for [properly] adequately or can be cared for adequately without the appointment of a conservator.

(g) The court shall assign to a conservator appointed under this section only those duties and authorities that are the least restrictive means of intervention necessary for the conserved individual. The court shall find by clear and convincing evidence that such duties and authorities shall restrict the decision-making authority of the conserved individual only to the extent necessary to provide for such personal needs or property management. Such needs and management shall be provided in a manner appropriate to the individual. The court shall make a finding of the clear and convincing evidence that supports the need for each duty and authority assigned to the conservator.

(h) Absent a court order to the contrary and except as otherwise provided in subsection (b) of section 19a-580e, a conservator appointed pursuant to this section shall be bound by all health care decisions properly made by the conserved individual's health care representative.

(i) A conserved individual retains all rights and authority not otherwise assigned to a conservator.

[(e)] (j) When determining whether a conservator should be appointed [and in selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. In making such determination, the court shall consider whether the respondent had previously made alternative arrangements for the care of his or her person or for the management of his or her affairs, including, but not limited to, the execution of a valid durable power of attorney, the appointment of a health-care agent or other similar document.] for the respondent, the court shall consider the following: (1) the abilities of the respondent, (2) the capacity of the respondent to understand and articulate an informed preference, (3) relevant and material information obtained from the respondent, (4) evidence of the respondent's past preferences and life style choices, (5) the respondent's cultural background, (6) the desirability of maintaining continuity in the respondent's life and environment, (7) whether the respondent has made adequate alternative arrangements for the care of his or her person or for the management of the individual's affairs, including, but not limited to, execution of a durable power of attorney, springing durable power of attorney, living will, trust or similar instrument or appointment of a health-care representative or health care agent, (8) any relevant and material evidence from the respondent's family or from a person regarding the respondent's past practices and preferences and (9) supportive services, technology or other means that are available to assist in meeting the respondent's needs. No conservator may be appointed if the respondent's personal needs and property management are being met adequately by an agency or individual appointed pursuant to section 1-43, 19a-575a, 19a-577, 19a-580e or 19a-580g of the general statutes.

(k) The respondent or conserved individual may[, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference,] appoint, designate or nominate a conservator pursuant to sections 19a-580e, 19a-580g or 45a-645 of the general statutes or may, orally or in writing, nominate a conservator who shall be appointed unless the court finds [the appointment of] that the appointee, designee or nominee is [not in the best interests of the respondent. In such case, or in the absence of any such nomination, the court] unwilling or unable to serve or there is substantial evidence to disqualify such person. If there is no such appointment, designation or nomination or if the court does not appoint the person appointed, designated or nominated by the respondent or conserved individual, the court may appoint any qualified person, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644. In considering whom to appoint as conservator under this subsection, the court shall consider (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved individual's preferences, (2) the ability of the proposed conservator to carry out the duties and authorities of the office, (3) the cost to the estate of the respondent or conserved individual, (4) the commitment of the proposed conservator to promoting the respondent's or conserved individual's welfare and independence, and (5) any existing or potential conflicts of interest.

[(f) Upon the request of the respondent or his or her counsel, made within thirty days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

(g)] (l) If the court appoints a conservator of the estate of the respondent, it shall require a probate bond. The court may, if it [deems] considers it necessary for the protection of the respondent, require a bond of any conservator of the person appointed under this section.

(m) Nothing in this chapter shall impair, limit or diminish a conserved individual's right to retain an attorney to represent such individual or to seek redress of grievances in any court or administrative agency, including proceedings in the nature of habeas corpus arising out of any limitations imposed on the conserved individual by court action taken under this chapter, chapter 319i, chapter 319j or section 45a-242 of the general statutes. In any other proceeding in which the conservator has retained counsel for the conserved individual, the conserved individual may ask the Probate Court to direct the conservator to substitute an attorney chosen by the conserved individual.

[(h) The court may limit the powers and duties of either the conservator of the person or the conservator of the estate, to include some, but not all, of the powers and duties set forth in subsections (a) and (b) of section 45a-644 and sections 45a-655 and 45a-656, and shall make specific findings to justify such a limitation, in the best interests of the ward. In determining whether or not any such limitations should be imposed, the court shall consider the abilities of the ward, the prior appointment of any attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the ward, any support services which are otherwise available to the ward, and any other relevant evidence. The court may modify its decree upon any change in circumstances.]

Sec. 17. Section 45a-653 of the general statutes **(Contracts and funds of alleged incapable person pending application for appointment of conservator. Notice of application.)** is repealed and following is substituted in lieu thereof:

(a) If an application for the appointment of a conservator has been made, and if, while the application is pending, the applicant records a notice of the application certified by the court with the town clerk of any town within which real property of the alleged incapable person is situated and with the town clerk of the town in which the alleged incapable person resides, any conveyance of such real property by such person and any contract made by such person between the time the notice of the application is recorded and the time of the adjudication of the court upon the application shall not be valid without the approval of the court.

(b) If, during the pendency of the application, the applicant lodges with any bank, trust company or other depositary a notice of the application certified by the court, such bank, trust company or depositary shall not allow any funds of the alleged incapable person to be withdrawn, between the time the notice of the application is lodged and the time of the adjudication of the court upon the application, without the approval of the court.

(c) The original of the notice of the application shall be filed with the court. [A] The notice [recorded or lodged pursuant to this section] may not be recorded or lodged elsewhere unless it is a copy certified by the court. The notice shall state that an application for appointment of a conservator is pending and shall include the name of the

alleged incapable person, the name of the applicant, the probate district in which the application is pending, and the date of application. The notice shall be signed and acknowledged by the applicant. The notice shall not include the allegation of facts on which the application is based.

Sec. 18. Section 45a-654 of the general statutes **(Appointment of temporary conservator. Duties.)** is repealed and the following is substituted in lieu thereof:

(a) Upon written application for appointment of a temporary conservator brought by any person [deemed] considered by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence or domicile of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee, the court may appoint a temporary conservator if the court finds by clear and convincing evidence that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, [and] (2) immediate and irreparable [injury] harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed [pursuant to this section] and (3) appointment of a temporary conservator is the least restrictive means of intervention available to prevent such harm. The court [may, in its discretion,] shall require the temporary conservator to give a probate bond. The court shall limit the duties[, responsibilities] and [powers] authorities of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings [to justify such limitation] by clear and convincing evidence of the immediate and irreparable harm that must be prevented by appointment of a temporary conservator and that support appointment of a temporary conservator. In making such findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. The court shall set forth each duty and authority of the temporary conservator. The temporary conservator shall have charge of the property or of the person of the [respondent] conserved individual or both for such period [of time] or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650. The court may (A) extend the appointment of the temporary conservator until the disposition of such application under section 45a-650, or for an additional thirty days, whichever occurs first, or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist. A temporary conservator shall have charge of the property or of the person of the conserved individual for not more than sixty days from the date of the initial appointment.

(b) [Except as provided in] Unless the requirement of a report by a physician under this subsection is waived by the court pursuant to subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is [presented to the judge] filed with the application, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court [may issue an order] shall provide for the disclosure of the medical information required pursuant to this subsection to the respondent's attorney, to the respondent on the respondent's request and to any other party considered appropriate by the court..

(c) On receipt of the application for the appointment of a temporary conservator, the court shall issue notice to the respondent, appoint counsel and conduct a hearing on the application in the manner pursuant to sections 45a-649 to 45a-650, inclusive, of the general statutes, as amended, except that (1) notice to the respondent shall be given not less than five days before the hearing, which shall be conducted not later than seven days after the application is filed, excluding Saturdays, Sundays, and holidays or (2) notice to the respondent, where an application has been made ex parte for a temporary conservator, shall be given not more than forty-eight hours after the ex parte appointment of a temporary conservator, with the hearing on such ex parte appointment being conducted not later than three days after the ex parte appointment, excluding Saturdays, Sundays and holidays. Service on the respondent of the notice of the application for the appointment of a temporary conservator shall be in hand and shall be made by a state marshal, constable or an indifferent person. Notice shall include (A) a copy of the application for appointment of temporary conservator and accompanying physician's report, (B) a copy of an ex parte decree, if any, appointing a temporary conservator, and (C) the date, place and time of the hearing on the application for the appointment of a temporary conservator. After hearing and on making the findings required in this section, the court may appoint a temporary conservator. If notice is provided to the next of kin under this section, such report of the physician shall not be disclosed to the next of kin except by order of the court.

(d)(1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection [(d)] (c) of this section would cause immediate and irreparable injury to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon receiving the evidence and making the findings required in subsection (a) of this section, provided the court makes a specific finding in any decree issued on the application stating the immediate or irreparable [injury] harm that formed the basis for the court's determination and why such hearing and appointment was not required before issuance of the ex parte order of appointment. If an ex parte order of appointment of a conservator is made, a hearing on the application for appointment of a temporary conservator shall be commenced not later than three days, excluding Saturdays, Sundays and holidays, after the ex parte order was

issued. A court may terminate an ex parte order at any time, but such an order shall, in any event, expire after the later of (1) the end of such three-day period or (2) the conclusion of a hearing on the application, provided that such hearing was commenced within such three-day period, and continued only for good cause.

[(2) After making such ex parte appointment, the court shall immediately: (A) Appoint an attorney to represent the respondent, provided if the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund; (B) schedule the date, place and time of a hearing to be held not later than seventy-two hours after the issuance of the court's decree, excluding Saturdays, Sundays and holidays; and (C) give notice by [mail, or such other notice as the court deems appropriate, on the respondent, the respondent's next of kin and such attorney, which notice shall include: (i) A copy of the application for appointment of temporary conservator and the accompanying physician's report; (ii) a copy of the decree appointing a temporary conservator; and (iii) the date, place and time of the hearing scheduled pursuant to subparagraph (B) of this subdivision, except that if the court determines that notice to the respondent under this subdivision would be detrimental to the health or welfare of the respondent, the court may give such notice only to the respondent's next of kin and the respondent's attorney.]

[(3)](2) After [such] a hearing held under this section, the court [shall] may appoint a temporary conservator, or confirm or revoke the appointment of the ex parte temporary conservator, if any, or may modify the duties[, responsibilities or powers] and authorities assigned under such appointment.

[(d) If the court determines that an ex parte appointment of a temporary conservator pursuant to subsection (c) of this section is not appropriate but finds substantial evidence that appointment of a temporary conservator may be necessary, the court shall hold a hearing on the application. Unless continued by the court for cause, such hearing shall be held not later than seventy-two hours after receipt of the application, excluding Saturdays, Sundays and holidays. Prior to such hearing, the court shall appoint an attorney to represent the respondent in accordance with subsection (c) of this section and shall give such notice as it deems appropriate to the respondent, the respondent's next of kin and such attorney, which notice shall include a copy of the application for appointment of a temporary conservator and the accompanying physician's report. After hearing and upon making the findings required in subsection (a) of this section, the court may appoint a temporary conservator.]

(e) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court may not appoint a temporary conservator unless it has been shown by clear and convincing evidence that (1) the respondent is incapable of managing his or her affairs or

incapable of caring for himself or herself and (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall [(1)] make a specific finding in any decree issued on the application stating why medical evidence was not required[, and (2) schedule a hearing in accordance with subsection (c) or (d) of this section, which hearing shall take place not later than seventy-two hours after the issuance of the court's decree].

[(f) Except as provided in subsection (g) of this section, a temporary conservator may not change the respondent's residence unless a court specifically finds, after a hearing, that such change is necessary.

(g) (1) If the temporary conservator determines it is necessary to cause the respondent to be placed in an institution for long-term care, the temporary conservator may make such placement after the temporary conservator files a report of such intended placement with the probate court that appointed the temporary conservator, except that if the placement results from the respondent's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the respondent would result from filing the report before making such placement, the temporary conservator shall make the placement before filing the report provided the temporary conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the temporary conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the respondent's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The temporary conservator shall give notice of the placement and a copy of such report to the respondent and any other interested parties as determined by the court.

(3) Upon the request of the respondent or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the respondent's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the respondent, either through the respondent's own estate or through private or public assistance, the court shall order that the respondent be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

[(h)](f) Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report and final accounting, if applicable and as directed by the court, with the court of [his or her] such conservator's actions as temporary conservator.

Sec. 19. Section 45a-655 of the general statutes **(Duties of conservator of the estate. Application for distribution of gifts of income and principal from the estate.)** is repealed and the following is substituted in lieu thereof:

(a) A conservator of the estate appointed under section 45a-646, 45a-650 or 45a-654 shall, within two months after the date of [his or her] the conservator's appointment, make and file in the Court of Probate, an inventory under penalty of false statement of [his or her ward] the estate of the conserved individual, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of [his or her] the conservator's appointment. Such inventory shall include the value of the [ward's] conserved individual's interest in all property in which the [ward] such individual has a legal or equitable present interest, including, but not limited to, the [ward's] the conserved individual's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the [ward] conserved individual and those members of the [ward's] conserved individual's family whom [he or she] the conserved individual has the legal duty to support and to pay the [ward's] debts, and may sue for and collect all debts due the [ward] conserved individual The conservator shall use the least restrictive means of intervention in the exercise of its duties and authorities.

(b) Any conservator of the estate of a married person may apply such portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse which the Court of Probate, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45a-177, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under section 45a-649.

(d) In the case of any person receiving public assistance, state-administered general assistance or Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by the Commissioner of Social Services. Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the [ward] conserved individual to the support of the [ward's] conserved individual's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services

pursuant to 42 USC 1396r-5(d)(2)-(4), or (2) any portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse in an amount that exceeds the amount determined allowable by the department pursuant to 42 USC 1396r-5(f)(1) and (2), notwithstanding the provisions of 42 USC 1396r-5(f)(2)(A)(iv), unless such limitations on income would result in significant financial duress.

(e) Upon application of a conservator of the estate, after hearing with notice to the Commissioner of Administrative Services, the Commissioner of Social Services and to all parties who may have an interest as determined by the court, the court may authorize the conservator to make gifts or other transfers of income and principal from the estate of the [ward] conserved individual in such amounts and in such form, outright or in trust, whether to an existing trust or a court-approved trust created by the conservator, as the court orders to or for the benefit of individuals, including the [ward] conserved individual, and to or for the benefit of charities, trusts or other institutions described in Sections 2055(a) and 2522(a) of the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts or transfers shall be authorized only if the court finds that: (1) In the case of individuals not related to the [ward] conserved individual by blood or marriage, the [ward] conserved individual had made a previous gift to that unrelated individual prior to being declared incapable; (2) in the case of a charity, either (A) the [ward] conserved individual had made a previous gift to such charity, had pledged a gift in writing to such charity, or had otherwise demonstrated support for such charity prior to being declared incapable; or (B) the court determines that the gift to the charity is in the best interests of the [ward] conserved individual, is consistent with proper estate planning, and there is no reasonable objection by a party having an interest in the [ward's] conserved individual's estate as determined by the court; (3) the estate of the [ward] conserved individual and any proposed trust of which the [ward] conserved individual is a beneficiary is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such [ward] conserved individual in accordance with such [ward's] conserved individual's established standard of living and for the support of persons the [ward] conserved individual is legally obligated to support; (4) the purpose of the gifts is not to diminish the estate of the [ward] conserved individual so as to qualify the [ward] conserved individual for federal or state aid or benefits; and (5) in the case of a [ward] conserved individual capable of making an informed decision, the [ward] conserved individual has no objection to such gift. The court shall give consideration to the following: (A) The medical condition of the [ward] conserved individual, including the prospect of restoration to capacity; (B) the size of the [ward's] conserved individual's estate; (C) the provisions which, in the judgment of the court, such [ward] conserved individual would have made if [he or she] conserved individual had been capable, for minimization of income and estate taxes consistent with proper estate planning; and (D) in the case of a trust, whether the trust should be revocable or irrevocable, existing or created by the conservator and court approved. The court should also consider the provisions of an existing estate plan, if any. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by the conservator shall be subject to continuing probate court jurisdiction in the same manner as a testamentary trust

including periodic rendering of accounts pursuant to section 45a-177. Notwithstanding any other provision of this section, the court may authorize the creation and funding of a trust that complies with section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. The provisions of this subsection shall not be construed to validate or invalidate any gifts made by a conservator of the estate prior to October 1, 1998.

Sec. 20. Section 45a-656 of the general statutes **(Duties and authorities of conservator of the person)** is repealed and the following is substituted in lieu thereof:

(a) The conservator of the person shall have only those authorities and duties expressly assigned pursuant to section 45a-650 of the general statutes and may have: (1) The duty and responsibility for the general custody of the [respondent] conserved individual; (2) the [power] authority to establish [his or her] the conserved individual's [place of abode] residence within the state, subject to the provisions of section 45a-656a of this act; (3) the [power] authority to give consent for [his or her] such individual's medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the [ward] conserved individual; and (5) the duty to take reasonable care of the [respondent's'] personal effects of such individual.[; and (6) the duty to]

(b) In carrying out the authorities and duties assigned by the Probate Court, the conservator of the person shall exercise such authorities and duties in a manner that is the least restrictive means of intervention and shall (1) assist the conserved individual in removing obstacles to independence, (2) assist the such individual in achieving self-reliance, (3) ascertain the conserved individual's views, (4) make decisions in conformance with the conserved individual's reasonable and informed expressed preferences, (5) make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved individual, and (6) make decisions in conformance with such individual's expressed health care preferences, including health care instructions and other wishes authorized in sections 19a-580e, unless otherwise provided in subsection (b) of section 19a-580e and section 19a-580g of the general statutes. The conservator shall afford the conserved individual the opportunity to participate meaningfully in decision-making in accordance with the conserved individual's abilities and shall delegate to the conserved individual reasonable responsibility for decisions affecting such individual's well-being.

(c) The conservator shall report at least annually to the [probate court which] Probate Court that appointed the conservator regarding the condition of the [respondent] conserved individual, the efforts made to encourage independence and whether appointment of a conservator is the least restrictive means of intervention for managing the conserved individual's needs. The [preceding] duties, responsibilities and [powers] authorities under this section shall be carried out within the [limitations of the] resources available to the [ward] conserved individual, either through [the ward's] the individual's own estate or through private or public assistance.

[(b)](d) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill

except under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 359.

[(c) (1) If the conservator of the person determines it is necessary to cause the ward to be placed in an institution for long-term care, the conservator may make such placement after the conservator files a report of such intended placement with the probate court that appointed the conservator, except that if the placement results from the ward's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the ward would result from filing the report before making such placement, the conservator shall make the placement before filing the report provided the conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the ward's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement and a copy of such report to the ward and any other interested parties as determined by the court.

(3) Upon the request of the ward or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the ward's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the ward, either through the ward's own estate or through private or public assistance, the court shall order that the ward be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

Sec. 21. (NEW) (Section 45a-656a. Restriction on placement of conserved individual in institution for long-term care.) (a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a conservator may not terminate a tenancy or lease of the conserved individual, sell or dispose of any real property or household furnishings of the conserved individual, or change the individual's residence unless a court finds, after a hearing, that such change is necessary or that the conserved individual agrees to such action.

(b) If the conservator determines it is necessary to cause the conserved individual to be placed in an institution for long-term care or to change the conserved individual's residence, the conservator shall file a report of the intended placement in long-term care with the Probate Court that appointed the conservator. The court shall hold a hearing to consider the report. If, after the hearing, the conservator obtains permission of the court, the conservator may make such a placement. The hearing shall be held not less than five days after the filing of the report, excluding Saturdays, Sundays and holidays, and not less than seventy-two hours before the placement in the institution for long-term care, except that if the placement results from the respondent's discharge from a hospital, the conservator may make the placement before filing the report provided the conservator (1) files the report not later than forty-eight hours, excluding Saturdays, Sundays and holidays, after making such placement, and (2) includes in the report a statement as to the hospital discharge and related circumstances requiring the placement of the conserved individual in the institution for long-term care. No such placement made before the filing of the report of the conservator shall continue unless ordered by the Probate Court after a hearing held pursuant to this section.

(c) The report filed under subsection (b) of this section shall set forth the basis for the conservator's determination, what community resources are available and have been considered to avoid the placement, and the reasons why the conserved individual's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement of the conserved individual in an institution for long-term care and a copy of such report to the conserved individual, the conserved individual's attorney, and any interested parties as determined by the court. Service shall be by first-class mail, postage pre-paid. The conservator shall provide a certification to the court that service was made in the manner prescribed by this subsection.

(d) The conserved individual may, at any time, request a hearing by the court on the individual's placement in an institution for long-term care, including the availability of a less restrictive alternative for the individual's placement. On the request of the conserved individual made after the initial hearing held under subsection (b), the court shall hold a hearing on the placement not later than ten days, excluding Saturdays, Sundays, and holidays, after receipt by the court of such request. The court is not required to conduct a hearing more than three times in any twelve-month period following the hearing held under subsection (b) authorizing the initial placement, except that the court shall conduct a hearing whenever information not previously available to the court is submitted with a request for a hearing.

(e) After the initial hearing held under subsection (b), the court may hold a hearing on a conservator's report and the placement of the conserved individual in an institution for long-term care in any case even if no request for a hearing is made.

(f) If the court, after a hearing on the placement of the conserved individual in an institution for long-term care, determines that the conserved individual's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the resources available to the conserved individual, either through the conserved individual's own estate or through private or public assistance, the court shall order that the conserved individual be placed and maintained in a less restrictive and more integrated setting.

(g) A conserved individual may waive the right to a hearing required under this section only after the individual's attorney has consulted with the individual and the attorney files with the court a record of the waiver. Such a waiver must represent the individual's own wishes.

(h) For purposes of this section, an "institution for long-term care" means a facility that has been federally-certified as a skilled nursing facility, an intermediate care facility, a residential care home, an extended care facility, a nursing home, a rest home and a rehabilitation hospital or facility.

Sec. 22. Section 45a-659 of the general statutes **(Conservator of nonresident's property.)** is repealed and the following is substituted in lieu thereof:

(a) If any [person] individual not domiciled [out of] in this state, and owning real property or tangible personal property in this state is incapable of managing his or her affairs, the [court of probate] Court of Probate for the district in which the property or some part of it is situated may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person in the state where the incapable person is domiciled and after notice pursuant to section 45a-649 or such reasonable notice as the court may order, and a hearing as required pursuant to section 45a-650 appoint a conservator of the estate for the real property and tangible personal property in this state of the incapable person pursuant to section 45a-650.

(b) If a conservator of the estate has been appointed for such an incapable person in the state of such person's domicile, (1) the court may, on application of the out-of-state conservator to act as conservator for real or tangible personal property of the incapable person in this state, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the state of the incapable person's domicile, and (2) if the application is for the appointment of a person other than the out-of-state conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-state appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in an out-of-state jurisdiction includes any person serving in the equivalent capacity in such state.

(c) The conservator of the estate for the property in this state shall give a probate bond, and shall, within two months after the date of his or her appointment, make and file

in the court of probate, under penalty of false statement, an inventory of all the real property and tangible personal property in this state of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

(d) The proceeds of any sale of [either] the real or tangible personal property, or [both] the tangible personal property, itself, may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the state where the incapable person is domiciled, following the application and proceedings which are required by section 45a-635.

(e) If an application for a conservator is made pursuant to this section, the Probate Court may not proceed to act on the application until an attorney is appointed to represent the individual. An attorney shall be appointed in the manner provided in section 15 of this act.

Sec. 23. Section 45a-660 of the general statutes **(Termination of conservatorship. Review by court.)** is repealed and the following is substituted in lieu thereof:

(a)(1) A conserved individual may, at any time, petition the Court of Probate having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved individual shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Probate Court, unless the hearing is continued for good cause. If such hearing is not held in such thirty-day period, the conservatorship shall terminate. If the [court of probate] Court of Probate having jurisdiction finds a [ward] conserved individual to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of [his or her] the conserved individual's property be restored to the [ward] conserved individual. (2) If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the [ward] conserved individual, upon such conservator or person giving such probate bond, if any, as the court orders. (3) If any [ward] conserved individual having a conservator dies, [his or her] the conserved individual's property other than property which has accrued from the sale of [his or her] such individual's real property shall be delivered to [his or her] the conserved individual's executor or administrator. The unexpended proceeds of [his or her] the conserved individual's real property sold as aforesaid shall go into the hands of the executor or administrator, to be distributed as such real property would have been.

(b) (1) In any case under subsection (a) of this section the conservator shall file in the court [his or her] the conservator's final account, and the court shall audit the account and allow the account if it is found to be correct. If the [ward] conserved individual is living, the [ward] individual and [his or her] the individual's attorney, if any, shall be entitled to notice by regular mail of any hearing held on the final account. (2) The [court of probate] Court of Probate having jurisdiction shall send written notice annually to the [ward] conserved individual and [his or her] the individual's attorney that the [ward] conserved individual has a right to a hearing under this section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than thirty days from the receipt of the [application] request unless continued for cause shown.

(c) The court shall review each conservatorship [at least every three years and] no later than one year after the conservatorship was ordered and no less than every three years after such initial review. After such a review, the court shall continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the [ward] conserved individual. The conservator and a physician licensed to practice medicine in this state shall each submit a written report to the court within forty-five days of the court's request for such report. On receipt of a written report, the court shall provide a copy to the conserved individual and attorney for the conserved individual. If the [ward] conserved individual is unable to request or obtain an attorney, the court shall appoint an attorney. If the [ward] conserved individual is unable to pay for the services of the attorney, the rates of reasonable compensation of such attorney shall be established by, and the attorney shall be paid from funds appropriated to, the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such rates of compensation shall be established by the Probate Court Administrator and the attorney shall be paid from the Probate Court Administration Fund. The physician shall examine the [ward] conserved individual within the forty-five-day period preceding the date of submission of the physician's report. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court may issue an order for the disclosure of medical information required pursuant to this subsection but shall issue such an order of disclosure for the conserved individual's attorney. No later than thirty days after receipt of the conservator's report and physician's evaluation, the attorney for the conserved individual shall notify the court that the attorney has met with the conserved individual and shall inform the court whether a hearing is being requested. Nothing in this section shall prevent the conserved individual or the individual's attorney from requesting a hearing at any other time as allowed by law.

(d) If the court [determines] finds, after receipt of the reports from the attorney for the [ward] conserved individual, the physician and the conservator, [that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician] by clear and convincing evidence, that the conserved individual continues to be incapable of managing the conserved individual's affairs and that there are no less restrictive means available to assist the conserved individual in managing the individual's affairs, the court shall

continue or modify the conservatorship under the terms and conditions of appointment of a conservator under section 45a-650, as amended by this act. If the court does not make such a finding of continuing incapacity by clear and convincing evidence, the court shall terminate the conservatorship. A hearing on the condition of the conserved individual shall not be required, but the court, in its discretion, may hold such hearing. If the conserved individual, attorney or conservator requests a hearing, the court shall hold a hearing within thirty days of such request.

Sec. 24. Section 45a-662 of the general statutes **(Conveyance of property by order of court.)** of the general statutes is repealed and the following is substituted in lieu thereof:

The [court of probate] Court of Probate in which [the] a conservator [of any incapable person] has been appointed may, concurrently with courts of equity, order such conservator to convey the interest of [his ward] the conserved individual in any real property which ought in equity to be conveyed to another person.

Sec 25. Section 45a-679 of the general statutes **(Conflicts between plenary guardian, limited guardian, conservator of the estate or person and temporary conservator to be resolved by Probate Court.)** is repealed and the following is substituted in lieu thereof:

If a ward or conserved individual has both a plenary guardian or limited guardian of the person with mental retardation and a conservator of the estate or person or a temporary conservator who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the court of probate making the appointment of such guardian or conservator and such court shall, after a hearing, order the course of action which in its discretion is in the best interest of the ward or conserved individual.

Sec. 26. (NEW) (Section 45a-701. Application for writ of habeas corpus.) (a) An individual subject to guardianship or involuntary conservatorship under chapter 802h may apply for and is entitled to the benefit of the writ of habeas corpus without having previously exhausted other available remedies including, but not limited to, the right to appeal the order of guardianship or involuntary conservatorship. The question of the legality of such guardianship or involuntary conservatorship shall be determined by the court or judge issuing such writ.

(b) A writ of habeas corpus shall be directed to the guardian of the person or the estate of the ward or to the conservator of the conserved individual and if illegality or invalidity of the guardianship or involuntary conservatorship is alleged in such writ, a copy shall also be directed to the judge of the court that issued the order as to such claim.

(c) An application for a writ of habeas corpus under this section shall be brought to either the Superior Court or the Court of Probate.

(d) If such application has been brought in the Court of Probate, the Probate Court Administrator shall appoint a three-judge court from among the several judges of probate

to hear such application. Such three-judge court shall consist of judges who are attorneys-at-law admitted to practice in this state. The judge of the Court of Probate who issued the order shall not be a member of the three-judge court. No such application shall be denied without the vote of at least two judges of the three-judge court. The judges of such court shall designate a chief judge from among their members. The three-judge court shall cause a recording to be made of all proceeding held under this section. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator. All records for any case before the three-judge court shall be maintained in the Probate Court in which the conservator or guardian was appointed.

(e) Hearing under this section shall be heard not later than ten days, excluding Saturdays, Sundays and holidays, after return of service of the writ.

(f) If the court or judge before whom such a writ is brought decides that the involuntary representation or guardianship is not illegal, such decision shall be considered a final judgment and subject to appeal.

(g) If the court or judge before whom such case is brought decides that the involuntary representation or guardianship is not illegal, such decision shall not bar issuance of such a writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was conserved or if such application is based on a ground different from that relied on in an earlier application. Such writ may be applied for by an individual subject to guardianship or involuntary conservatorship or on the behalf of such individual by any relative, friend or person interested in such individual's welfare.

(h) An appeal to the Superior Court of a decision rendered by a three-judge court under this section shall be filed in the judicial district in which the Probate Court that issued the order appointing a guardian or involuntary conservator is located. Such appeal shall be heard not later than thirty days of the return of service of the appeal.

Sec. 27. Section 45a-663 of the general statutes **(Compensation of conservator if [ward] <u>conserved individual</u> unable to pay.)** is repealed and the following is substituted in lieu thereof:

If a [ward] <u>conserved individual</u> is unable to pay for the services of a conservator appointed pursuant to the provisions of sections 45a-593 to 45a-700, inclusive, the reasonable compensation of such conservator shall be paid from the Probate Court Administration Fund established under section 45a-82, pursuant to rules and regulations and at rates established by the Probate Court Administrator.

Sec. 28. (NEW) (Sec. 17a-716. Writ of habeas corpus.) An individual confined in a hospital or inpatient treatment facility for treatment of alcohol or drug dependency in this state may seek a writ of habeas corpus in the Superior Court. The question of the legality of such confinement shall be determined by the court or judge issuing such writ. The writ shall be directed to the superintendent or director of the hospital or treatment facility and, if illegality or invalidity of the commitment is alleged in such writ, a copy shall also be directed to the judge of the committing court as to such claim. Such judge

shall be represented by the state's attorney for the judicial district in which such committing court is located. If the court or judge before whom such case is brought decides that the confinement is not illegal, such decision shall not bar issuance of such writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was confined. Such writ may be sought by the confined individual or on behalf of the individual by any relative, friend or person interested in the individual's welfare. Court fees may not be charged against the superintendent or director of the hospital or the judge.

Sec. 29. Section 49-11 of the general statutes **(Release of mortgage by executor, administrator, spouse, next of kin, guardian, conservator or other suitable person.)** is repealed and the following is substituted in lieu thereof:

The executor of the will or administrator of the estate of any deceased mortgagee, or the spouse or next of kin, or other suitable person whom the court [deems] <u>considers</u> to have a sufficient interest, to whom a decree is issued under section 45a-273, and any guardian [or conservator] whose ward <u>or conservator whose or conserved individual</u> as defined in section 45a-644, as amended, is a mortgagee, may, on the payment, satisfaction or sale of the mortgage debt, release the legal title to the party entitled thereto.

Sec. 30. Section 12-45 of the general statutes **(Return to assessors of personalty in trust.)** is repealed and the following is substituted in lieu thereof:

Each sole trustee residing in this state, having in his hands personal property liable to taxation belonging to the trust estate, shall make return thereof to the assessors of the town where he resides. If such personal property is in the hands of more than one trustee, if they all reside in the same town, they shall cause such return to be made by one of their number in such town; if they do not all reside in the same town, they shall cause such return to be made by one of their number, residing in the town in which the affairs of such trust are managed and administered, to the assessors of such town; but, if none of such trustees resides in such town, they shall designate one of their number who shall make such return to the assessors of the town where he resides. Each guardian or conservator shall make return of the personal estate of [his] <u>the guardian's</u> ward <u>or the conservator's conserved individual</u> to the assessors of the town in which such ward <u>or conserved individual</u> resides.

Sec. 31 Section 19a-580e of the general statutes **(Conservator's duty to comply with [ward's] <u>conserved individual's</u> health care instructions. Precedence of health care representative's decisions. Exceptions.)** is repealed and the following is substituted in lieu thereof:

(a) Except as authorized by a court of competent jurisdiction, a conservator shall comply with a [ward's] <u>conserved individual's</u> individual health care instructions and other wishes, if any, expressed while the [ward] <u>conserved individual</u> had capacity and to the extent known to the conservator, and the conservator may not revoke the [ward's]

conserved individual's advance health care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health care decision of a health care representative takes precedence over that of a conservator, except under the following circumstances: (1) When the health care decision concerns a person who is subject to the provisions of section 17a-566, 17a-587, 17a-588 or 54-56d; (2) when a conservator has been appointed to a [ward] conserved individual who is subject to an order authorized under subsection (e) of section 17a-543, for the duration of the [ward's] conserved individual's hospitalization; or (3) when a conservator has been appointed to a [ward] conserved individual subject to an order authorized under section 17a-543a.

Sec. 32. Sections 45a-191 **(Interest of appellant to be stated.)** and 45a-192 **(Order of notice.)** of the general statutes are repealed.

Sec. 33. This act shall take effect on October 1, 2007.

Testimony of:

Joseph P. Secola
Judge of Probate, District of Brookfield
And
President of the Connecticut Probate Judges Association for Local Courts, Inc.

before the

The Judiciary Committee

March 30, 2007

Co-Chairs, Sen. McDonald and Rep. Lawlor, and members of the Judiciary Committee, I am Joseph P. Secola, Judge of Probate for the District of Brookfield and President of the Connecticut Probate Judges Association for Local Courts, Inc., an organization of over 30 probate judges, who are committed to preserve the local court features of our probate system.

The Probate Assembly has just adopted major and historic reforms to improve our beloved 300 year-old Probate court System. Besides dramatically increased education for judges (requiring all 15 CLE hours be in person, up from 5), including intensive training and mentoring for new judges, we have adopted certain minimum standards for courts. The two most important standards deal with 1) court hours of operation (requiring a 20 hour/week minimum) and 2) compliance with *Conn. Gen. Stat. § 45a-8,* which requires towns to provide adequate facilities for their probate court. If the Probate Administrator had been enforcing this statute, many voluntary mergers would already have taken place.

Our reforms preserve our most important quality – the accessibility to the general public, who can come to their local probate court without a lawyer and without the intimidating presence of metal detectors and sheriffs. Our people can come to their local probate court when they need help with their estate, their elderly loved ones, their mentally disabled loved ones, and their children, any of whom maybe infirm and in need of the assistance of the local probate court; no bureaucracy, no red tape, just a clerk or judge to help.

In an age which prizes efficiency above everything else, we are constantly bombarded with this bigger is better philosophy, resulting in constant mergers, a massive federal government and larger and larger multi-national corporations, all of which cause our heads to keep spinning. We all morn the loss of the sense of community many of us had growing up; the local probate courts are one of the few community building institutions left, where we can sit down and catch our breadth in an informal and welcoming atmosphere, many times with a judge we already know and trust.

Our Association strongly opposes S.B. 1272 and S.B. 1454, explained in the following chart of bills. We support S.B. 1439, which provides increased protections for conserved persons, but oppose 3 sections of this bill as detailed in the chart of bills. We support S.B. 1454, which raises the limit from $20,000 to $40,000 for small estates. We support H.B. 7382, which transfers the cost of present and former judges and employees from the Probate Fund to the General Fund. We suggest this bill be expanded to also transfer the system's indigency costs to the General Fund.

What follows is a chart for specific bills and language as well as a detailed memorandum with documents attached discussing the major reforms adopted by the probate assembly and the financial mismanagement and excessive spending by the probate court administrator.

CHART REGARDING SPECIFIC BILLS

1. **OPPOSE** S.B. No. 1272 (RAISED) AN ACT CONCERNING ADMINISTRATION OF THE COURTS OF PROBATE AND THE DUTIES OF THE PROBATE COURT ADMINISTRATOR.

> **OPPOSE** – THIS BILL CREATES A MONARCHY IN THE PCA, GIVING HIM CARTE BLANCH CONTROL OF ALL COURTS, JUDGES, STAFF, ETC. AND ALLOWS HIM TO DESIGNATE "SPECIAL JUDGES" AND THEREBY PROVIDE INFERIOR SERVICES TO CONN. RESIDENTS, BASED ON WHERE THEY LIVE, AS WELL AS DISENFRANCHISING THE VOTE OF MANY CONN. RESIDENTS. PROBATE JUDGES ARE ELECTED OFFICIALS, NOT POTTED PLANTS.

2. **OPPOSE** S.B. No. 1453 (RAISED) AN ACT CONCERNING THE TRANSFER OF AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.

> **OPPOSE** - THIS BILL ALLOWS FORUM SHOPPING BETWEEN THE SUPERIOR COURT AND PROBATE COURTS AS WELL AS BETWEEN PROBATE COURTS. IT ALLOWS THE PCA TO ASSIGN "SPECIALLY TRAINED JUDGES" TO REPLACE ANY JUDGE AT ANY TIME AT THE REQUEST OF ANY PARTY. TH IS ALLOWS THE PCA TO PROVIDE INFERIOR SERVICES TO CONN. RESIDENTS, BASED ON WHERE THEY LIVE AS WELL AS DISENFRANCHISING THE VOTE OF MANY CONN. RESIDENTS. PROBATE JUDGES ARE ELECTED OFFICIALS, NOT POTTED PLANTS.

3. **SUPPORT with 3 exceptions** S.B. No. 1439 (RAISED) AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS.

WE OPPOSE THE CHANGES SHOWN IN THESE SECTIONS:

> Sec. 2. Section 45a-649 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):
>
> (a) (1) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a date, time and place named in the citation, which shall be served on the parties at least [seven] fourteen days before the hearing date, or in the case of an application made pursuant to section 17a-543 or 17a-543a, at least seven days before the hearing date, which date shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. [Notice of the hearing shall be sent within thirty days after receipt of the application.]

3.A. OPPOSE Section 2(a)(1): REGARDING ADDING 17A-543 AND 17A-543A – THESE STATUTES INVOLVE MEDICATION AND PSYCHIATRIC TREATMENT - ESPECIALLY WHEN IMMEDIATE TREATMENT IS NEEDED, DOUBLING THE NOTICE TIME ALLOWS MENTALLY DISABLED INDIVIDUALS TO REMAIN VULNERABLE AND A DANGER TO THEMSELVES AND OTHERS

Sec. 4. Section 45a-650 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(b) After the court determines pursuant to subsection (a) of this section that it has jurisdiction over the application for involuntary representation, the court shall receive evidence regarding the [condition] capacity of the respondent [, including a written report or testimony by] to care for himself or herself or manage his or her affairs that may include evidence from one or more physicians licensed to practice medicine in the state who have examined the respondent within [thirty] forty-five days preceding the hearing. The [report or testimony] evidence shall contain specific information regarding the [disability and the extent of its incapacitating effect] respondent's condition and the effect of the condition on the respondent's ability to care for himself or herself or manage his or her affairs. The court [may] shall also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, [reports] evidence from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court deems qualified to provide such evidence. [The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or his or her refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the court shall make a specific finding in any decree issued on the petition stating why medical evidence was not required. In any matter in which the Commissioner of Social Services seeks the appointment of a conservator pursuant to chapter 319dd and represents to the court that an examination by an independent physician, psychologist or psychiatrist is necessary to determine whether the elderly person is capable of managing his or her personal or financial affairs, the court shall order such examination unless the court determines that such examination is not in the best interests of the elderly person. The court shall order such examination notwithstanding any medical report submitted to the court by the elderly person or the caretaker of such elderly person.] Any medical [report] evidence filed with the court pursuant to this subsection shall be confidential.

3.B. OPPOSE Section 4(b) – DELETING THE COURTS' ABILITY TO WAIVE MEDICAL EVIDENCE, ESPECIALLY IN EMERGENCTY SITUATIONS, ALLOWS MENTALLY DISABLED INDIVIDUALS TO REMAIN VULNERABLE AND A DANGER TO THEMSELVES AND OTHERS.

Sec. 4. Section 45a-650 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

[(f)] (i) Upon the request of the respondent [or his or her counsel, made within thirty days of the date of the decree] or any interested party, the court shall, [make and furnish findings of fact to support its conclusion] within fourteen days of the date of such request, clarify the findings of fact required to support an appointment of conservator under this section.

3.C. OPPOSE Section 4 (i) – THIS SECTION ADDS "ANY INTERESTED PARTY" AND WE BELIEVE THAT THIS IS A VIOLATION OF THE RIGHT TO PRIVACY OF THE RESPONDENT, WHO SHOULD BE THE ONLY ONE WHO CAN REQUEST THIS FACTUAL CLARIFICATION.

4. SUPPORT: S.B. No. 1454 (RAISED) AN ACT CONCERNING THE REQUIREMENTS FOR FILING AN AFFIDAVIT IN LIEU OF ADMINISTRATION IN THE PROBATE OF A SMALL ESTATE.

SUPPORT – THIS BILL RAISES THE LIMIT FROM $20,000 TO $40,000.

5. SUPPORT: H.B. No. 7382 (RAISED) AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR PROBATE COURT JUDGES AND EMPLOYEES.

See paragraph 9 of my attached memo – indigency costs and health insurance are driving the financial problems of the probate system.

CONNECTICUT PROBATE JUDGES ASSOCIATION FOR LOCAL COURTS, INC.

MEMORANDUM

TO: Co-Chairmen and Members of the Judiciary Committee and Interested Members of the General Assembly

FROM: Judge Joseph P. Secola, District of Brookfield and President of the Connecticut Probate Judges Association for Local Courts, Inc.

DATE: March 30, 2007

RE: 1) Major Reforms adopted by the Probate Assembly and 2) Financial Mismanagement, Excessive and Wasteful Spending, and a Lack of Openness and Transparency by the present Probate Administrator

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1. Probate Judges have adopted Major Reforms. At a Probate Assembly Meeting on February 28, 2007, Probate Judges unanimously adopted historic reforms on Judicial Education (see pages and Minimum Standards for Probate Courts. I co-chair, with President-Judge Dianne Yamin[1] of Danbury, a working group of thirty probate judges, who have proposed reforms in response to the *Program Review & Investigations Committee* recommendations. These proposals were adopted on February 28, 2007. Besides dramatically increased education for judges [see attached pages 3-7] (requiring all 15 CLE hours be in person, up from 5), including intensive training and mentoring for new judges, we have adopted certain minimum standards for courts. [see attached pages 1-2] The two most important standards deal with 1) court hours of operation (requiring a 20 hour/week minimum) and 2) compliance with *Conn. Gen. Stat. § 45a-8,* which requires towns to provide adequate facilities for their probate court. If the Probate Administrator had been enforcing this statute, many voluntary mergers would already have taken place. The statute is attached as pages 29-30. Recently I had an encouraging conversation with the judicial department's Chief Court Administrator, Judge Lavery, who encouraged my own view that these two reforms will achieve the voluntary consolidation needed.

2. Probate Courts provide money to the state each year. In addition to funding themselves, the probate courts have generated **over 80 million dollars for the state in the past four years** from liens asserted against estates. This money is used by the state to provide services to Connecticut residents. See letter from the Department of Administrative Services dated December 26, 2006 attached as page 8.

3. Lack of Openness and Transparency in Budgetary matters. One of the casualties of Probate Administrator James J. Lawlor's financial and personnel mismanagement of his office was staff accountant/auditor David Saltzman, who had worked in the Probate Administrator's office for 15 years, from 1990-2005. See letter of Saltzman to Sen. Coleman, written in the spring of 2006, attached as page 9. **This letter reveals not only the Probate Administrator Lawlor's manufacture and use of knowingly faulty financial projections, but also his real purpose, namely to achieve a fore-ordained massive consolidation of courts.**

4. Local Court Costs Distorted: The first financial deficit in the history of the probate court system, occurring in the 05-06 fiscal year was not the result of probate court expenses, i.e. staff, judges' salaries[2], and operating expenses. Probate Administrator Lawlor's figures show 44

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[1] President of the Connecticut Probate Assembly of judges since April, 2006.

[2] Program Review & Investigations committee staff found that judges' salaries rose 18% over six years, from 1999-

courts "in the red". To support his contention that many of the courts are operating "in the red", Probate Administrator Lawlor unilaterally changed the accounting system, in violation of statute, to allocate health insurance costs to each court even though the legislature decided that this expense would be a system cost. See *P.A. No. 96-110*, codified as *Conn. Gen. Stat. §5-259 (g)*. **In reality the individual courts are not losing money.** There is only one court experiencing a true deficit (Hartford - $38,000). See 2005 chart of individual court income and expenses, showing a net income to the Probate Fund of 9.2 million dollars, according to the Probate Administrator's own figures, attached as pages 10-12. **The problem is the financial mismanagement and excessive spending by Probate Administrator Lawlor, who was appointed by former Chief Justice Sullivan in 2002, both Waterbury residents.** The Probate Administrator serves at the pleasure of the Chief Justice.

5. Dramatic Probate Administrator Staff Increases. Probate Administrator Lawlor has dramatically increased his staff from 13 employees[3] to 20 employees plus numerous outside contractors, all performing staff functions. Staff salaries and benefits rose **from $1.2 million in 02-03 to nearly $2.0 million in 06-07, a 60%** increase **in 5 years.** See employee comparison chart at page 13; the 2007 OLR report of staff salaries at page 15; and Probate Fund expenditures on "Personal Services-Staff" and "Fringe Benefits-Staff" during the 02-03 to 05-06 fiscal years, attached as page 27.

6. Massive Spending on Outside Consultants. Beginning with the 02-03 fiscal year, Probate Administrator Lawlor has spent **$1.2 million dollars** on outside professionals, including **six-figure spending on consultants.** The professional fees have risen from $54,000 in 02-03 to $220,000 in 05-06, **cumulatively $570,000 over the 3.5 years** [see 2005 OLR report at pages 18-23]. **However the 2007 OLR report shows that this spending has exploded, as in a 14 month period, from 12-1-2005 to 1-13-2007, the Probate Fund expenditures on "Professional Fees" was $600,000, as much as the last 3.5 years** [see 2007 OLR report at pages 14-17]. The probate courts have not benefited in any way from these wasteful expenditures on consultants, lawyers and public relations firms. Compare the Probate Fund expenditures on "Professional Fees" during the 02-03 to 05-06 fiscal years, attached as page 27.

7. Lack of Candor: Children's Court Costs Hidden: On March 14, 2005, before the Judiciary Committee, Lawlor testified that the cost of the New Haven regional children's court is "$170,000. My estimate is that when we get 13 courts online, one in every DCF district, that our total cost will be less than $2 million per year."[4] However, 10 months after this testimony, Lawlor told Judge Pellegrino that 7 courts would cost 5 million annually. Judge Pellegrino "strongly encouraged" Lawlor to immediately report the true costs of operating the new regional children's courts to the "Executive and Legislative branches" and seek "permanent funding", but he never has. **The attached letter of Judge Pellegrino reveals the significant difference between what is reported to the public, and what is actually requested in Mr. Lawlor's**

2005, averaging a 3% per year increase. ***Program Review & Investigations Committee, 2005 Study, Probate Court System Final Report at page 36.***

[3] Under former Probate Administrator Paul Kurmay, who was replaced by Lawlor in the spring, 2002.

[4] See March 14, 2005 transcript of public hearing before Judiciary committee at p. 6-7.

budget.[5] See 1-31-2006 Pellegrino letter, attached as pages 24-25.

8. Lack of Transparency and Openness in Planning. At least annually, the Probate Administrator and the Chief Justice meet to discuss the probate system, a meeting that the chief counsel of the Probate Administrator's office, Linda Dow, who had been on staff for more than 20 years, always attended. When Probate Administrator Lawlor was appointed by Chief Justice Sullivan, Attorney Dow was intentionally excluded from these meetings. Moreover, despite her exemplary service to the probate court system, Linda was **involuntarily transferred** to the Judicial Department, Juvenile division, in the summer of 2005. Universally, the judges and their court staff relied upon the advice and guidance of Attorney Dow and auditor Saltzman. They provided the institutional memory of how the probate courts have historically operated; without them, any historical restraints on the operation, including staff size and other spending, of the Probate Administrator's office are gone. Without them, we are all diminished in our capacity to serve the public. Such personnel mismanagement must be reversed; a new Probate Administrator should immediately seek their return.

9. First ever deficit driven by two system costs: Indigency Fees and Health Insurance. A simple analysis of the use of the Probate Fund reveals that two system-wide costs are driving the present financial stresses on the probate court system. **Indigency costs have quadrupled in the past five years from 1.0 million in 01-02 to over 4.0 million in 05-06.** In the same 5 years, Health Insurance for Courts (current judges and staff) rose from 1.8 million to 2.8 million; while Health Insurance for Retirees rose from 1.1 million to 2.2 million. **Total Health Insurance costs have nearly doubled from 2.9 million to 5 million.** See Probate Administrator budget ("Health Ins.-Courts" and Health Ins.-Retirees"), attached as page 27, and the Indigency chart, attached as page 28. If a new fiscally conservative Probate Administrator eliminated the millions in wasteful spending as well as reveal and seek assistance for the millions of dollars in hidden costs of the regional children's courts detailed earlier; these two system costs will remain and need to be dealt with openly.[6]

10. Our entire judicial system needs a fresh start. When a new Chief Justice is confirmed, she will provide the judicial branch with a fresh start to continue on the path to openness and transparency. We can only hope that a new Probate Administrator is then appointed, as the probate court system needs the same transparent leadership, coupled with a fiscally conservative attitude toward the use of public funds.

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[5] This lack of candor was revealed to me at a meeting I was invited to near the end of the 2005 legislative session. At that time, the CBA President, Fred Ury, invited me and Probate Administrator Lawlor to a meeting to see if we could find any common ground. At that meeting Probate Administrator Lawlor stated his belief that the future of the probate courts was the new regional children's courts, and that he was willing to spend the ENTIRE Probate Fund to get these regional children's courts up and running, because he stated that they will be so successful that the legislature will have to fund them out of general tax revenues, something he has never informed the legislature of.

[6] Program Review Recommendation #2, states: "The costs related to indigent cases shall be paid from the state's general revenues." ***Program Review & Investigations Committee, 2005 Study, Probate Court System Executive Summary at page ii.***

MINIMUM STANDARDS/
VOLUNTARY CONSOLIDATION
SUBCOMMITTEE

February 21, 2007

RE: Status to date (summary form)

CRITERIA TO BE USED
TOWARDS VOLUNTARY CONSOLIDATION

The subcommittee of the Working Group has met approximately nine (9) times on its own and at least an additional ten (10) times with the Working Group Committee and proposes the following criteria. The subcommittee has agreed that the absence of one or more of the following should prompt a) first contact with the Judge by the PCA (with a period of 30 days to respond and if no response or inadequate response; b) PCA contact with the local municipal CEO (s) with a recommendation that they first seriously consider correcting the situation or voluntarily consolidating with another district. If no solution thereafter, PCA to advise legislature per Statute.

Minimum Standards, as follows:

1. Court hours: Courts to be "open to the public" 5 days per week (except where town supplied facility is closed), for not less than 20 hours per week. Courts to post accessibility information with phone numbers when not open (if less than full time).
2. Each Court must have a clerk and a Judge and be staffed by the judge and/or clerk during the hours the court is "open to the public". In addition, all Courts must have at least two designated standby judges, and their names and contact information posted whenever the judge of that district is not available.
3. Facilities Compliance: CGS 45a-8

a. Hearing room of adequate size.

b. Separate space of adequate size for clerk (s).

c. Vault (conforming to statute) and to include access to public records during closed periods (when not open full time) or posting of access information with phone numbers, when closed.

d. Appropriate storage facilities.
e. Judge's office (separate from clerk's office).

4. CMS software and hardware with all updates.

5. Financially viable (have contributed to the Probate Administration Fund for 3 of the last 5 years, with the cost of insurance not included in statutory computation);
6. Geographically appropriate to serve the needs of the population served, taking into account accessibility and public transportation.

NOTE: This report is provided in part as a response to the Program Review Committee's recommendations and in part as part of an overall review of the Probate Court system, in an effort to make it operate in today's world, recognizing that this is only one portion of the overall report. Unanimously recommended by the Working Group, February 21, 2007.

STATE OF CONNECTICUT
OFFICE OF THE PROBATE COURT ADMINISTRATOR
186 NEWINGTON ROAD
WEST HARTFORD, CONNECTICUT 06110

TR 91-417 REVISED JULY, 1993, ___, 2007

TO: JUDGES OF THE COURTS OF PROBATE AND COURT PERSONNEL

RE: **CONTINUING JUDICIAL EDUCATION REQUIREMENTS**

The Continuing Judicial Education Requirements were adopted by the Connecticut Probate Assembly June 17, 1987, amended by the Connecticut Probate Assembly on January 17, 1991. Paragraph 3, which explains "in-person" credit hours, was revised in July, 1993. This entire TR was substantially revised, expanded, and amended in (month), 2007 by the Connecticut Probate Assembly.

(NEW SECTION) Section 1. REQUIREMENTS FOR NEWLY ELECTED JUDGES

A newly elected probate judge is a person elected to serve his or her first term of office whether during the regular quadrennial election or by a special election.

A newly elected probate judge must (a)ttend a six day pre-bench orientation program, which will assist newly elected probate judges to make the transition to the new role of probate judge. It is designed to prepare the probate judge for the first day as probate judge upon swearing in. It is designed and required to be taken prior to assuming the position as probate judge regardless of educational background. The courses shall be offered in November and December, after the judge's election, but prior to the judge being sworn in.

The six day program shall consist of the following:

A) All courses of study required by C.G.S. § 45a – 27:

1) Civil Procedure, including constitutional issues, due process, and evidentiary considerations,

NOTE: A judge who has not completed the Civil Procedure course of Study will be precluded from presiding at any adversarial proceeding and another Judge shall be cited in to preside at these adversarial hearings until this educational requirement is completed.

2) Property Law, including conveyancing and title considerations,
3) The law of Wills and Trusts, and
4) Family Law in the context of probate courts

B) In addition to statutory requirements of C.G.S § 45a - 27 programs shall consist of:

1) Review of areas of Probate Jurisdiction,
2) Ethics,
3) Tasks of judging and conducting hearings,
4) Preparation and writing decrees,
5) Administrative duties of the new judge with emphasis on legal research, case flow, file and financial management requirements, court operations and support for judges, and
6) Substantive study of Conservatorships, Guardianships for Minors, Guardianships of Mentally Retarded Persons, Termination of Parental Rights and Adoptions.

C) Implementation

1) Probate Administration with the assistance of the Probate Assembly shall facilitate a series of meetings, lectures and court visits for the new judges.

2) The assistance of professional educators is contemplated in setting the final course curriculum and teaching with the Probate Assembly providing experienced judges for substantive probate law. In addition, the Continuing Education Judges Support Services of the State Judicial Department Staff and Facilities and other State Agencies shall be utilized whenever possible.

D) Mentor program.

Each new judge shall be assigned a mentor. Each mentor shall have served as a probate judge for a minimum of four years. The mentoring program shall include a total of fourteen hours for the new judge to sit in and observe hearings conducted by the mentor or other approved probate judge. The fourteen hours need not be consecutive. The mentor or other approved judge must certify attendance by the new judge on a form provided by the office of the probate court administrator. The mentoring program shall take place during the months of November, December and January, following the judge's election.

E) Six Month Review

Approximately six months after assuming the position of probate judge, the new judges shall meet as a group with the Probate Administrator and representatives of the Continuing Education Committee of the Probate

Assembly for an overview of the substantive law required by C.G.S. § 45a – 27.

F) Special election time requirements

Judges elected in a special election shall be required to meet all of the same educational requirements as above; however, they have 45 days after the election to comply.

The new training program shall be audio and video recorded for use in education of judges in special and off year elections.

The failure of any judge in meeting the requirements of this section shall be referred to the Executive Committee of the Probate Assembly for such action as it deems appropriate, including, but not limited to, reference to the Council on Probate Judicial Conduct. See C.G.S. §45a-63; Canon 3, Sections B (2) and C (l) of the Code of Probate Judicial Conduct; and the Minimum Standards for Judges of Probate.

Section 2: ANNUAL REQUIREMENTS FOR ALL JUDGES

All judges of probate shall annually complete a minimum of **fifteen** credit hours of approved continuing judicial education instruction, (except those judges specifically exempted from this requirement by these regulations). All fifteen credit hours must be achieved by the personal attendance of the Judge. Probate Administration and the Probate Assembly shall offer educational oppurtunities which will satisfy all fifteen hours annually.

An instructional hour must contain at least fifty minutes with no credit given for introduction of the speaker, meal breaks, or business meetings.

Each judge of probate shall be responsible for ascertaining whether or not a particular course satisfies the requirements of these regulations. Judges shall exercise discretion in choosing those approved programs that are most likely to enhance judicial skills.

Section 3: CERTIFICATION

No later than January 31st of each year each judge of probate shall submit to the Probate Court Administrator a statement of the number of hours of judicial education programs attended during the reporting period. Such statement shall be rendered on a form provided by the office of the probate court administrator. The failure to file a truthful statement or the failure to attend the minimum number of credit hours required shall be referred to the Executive Committee of the Probate Assembly for such action as it deems appropriate, including, but not limited to, reference to the Council on Probate Judicial Conduct. See C.G.S. §45a-63; Canon 3, Sections B (2) and C

(l) of the Code of Probate Judicial Conduct; and the Minimum Standards for Judges of Probate.

Section 4: ESTABLISHMENT OF COMMITTEE

There is established a Judicial Education Standards Committee consisting of the chairman of the Connecticut Probate Assembly's Continuing Education Committee, the executive secretary of the Connecticut Probate Assembly, the probate court administrator or his designee, and the first vice-president judge of the Connecticut Probate Assembly, who shall serve as chair. The purpose of this committee is to assist in the implementation of these regulations.

Section 5. EXEMPTIONS

Any judge of probate who has obtained a written waiver from the Judicial Education Standards Committee shall be exempted from the minimum requirements for the reporting period for which the waiver is granted.

Section 6. CREDITS

Credits will be given only for continuing education instruction or activities approved by the Judicial Education Standards Committee. Continuing legal education activities conducted by the following sponsors are presumptively approved for credit, provided the subject matter is related directly to probate law or will enhance the skills of the judge in the judge's capacity as a probate judge.

Connecticut Probate Assembly Seminars/Probate Court Administrator's Seminars (Note: For new judges elected in special or "off-year" elections, this includes training at the Administrator's office.)

Continuing Education Judges Support Services of the State Judicial Department Staff and Facilities and other State Agencies

National College of Probate Judges' Seminars

American Bar Association Seminars

Connecticut Bar Association Seminars

County and local Bar Association Seminars

Accredited Connecticut legal, medical, and social work courses.

Regional meetings of Judges of Probate, where education is offered.

Judges who participate in Probate Assembly education programs shall be allowed credit preparation for the annual education requirements in an amount equal to the time of the presentation.

Other sponsors may be added to this list as their identities or programs are accepted, confirmed and approved by the Judicial Education Committee.

In addition, judges may receive credit for presenting seminars and other instructional materials relative to probate law and procedures, subject to the approval of the Judicial Education Standards Committee. This approval *must* be obtained before the judge submits the Compliance Report to the Administrator's office.

The Judicial Education Standards Committee shall evaluate and, where appropriate, approve those
programs that serve to satisfy the requirements of the regulations. Although all sponsors' listed above are presumptively approved for credit, an Application for Credit for all sponsors' other than the Connecticut Probate Assembly/Probate Court Administrator must be made to the Judicial Education Standards Committee. All Judges seeking such approval shall submit in writing to the committee an explanation of the benefit of the program to the position of probate judge, on a form prepared by the Probate Court Administrator's Office, which shall be called an "Application for Educational Credit". In evaluating the specific programs, the committee shall consider the following factors:

(1) Whether the course tends to increase the participant's professional competence as a judge;

(2) The number of hours of actual presentation and participation, so that the appropriate number of credit hours can be identified;

(3) The usage of written educational materials that reflect thorough preparation by the course provider and that assist course participants in improving their judicial skills.

The assistance of the Judicial Branch, Superior Court Operations Continuing Education shall be sought in developing and implementing the educational requirement for new judges and for annual education programs.

DEPARTMENT OF ADMINISTRATIVE SERVICES STATE OF CONNECTICUT

165 Capitol Avenue
Hartford, CT 06106-1658

December 26, 2006

Hon. Joseph P. Secola
Probate District of Brookfield
P.O. Box 5192
Brookfield, CT 06804

Re: Revenue Generated through Probate Court Processes

Dear Judge Secola:

It was such a pleasure speaking with you last week. The Department of Administrative Services has worked very hard to improve communication between the Probate Courts and the agency in order to both maximize revenue and respond to questions and concerns in a timely and consistent manner. We value this partnership and the many positives it has provided to DAS.

In response to your questions regarding the revenue collected by DAS through the Probate Court processes; the following represents total revenues for the last four fiscal years.

FY02-03	FY03-04	FY04-05	FY 05-06
$16,867,476.45	$17,835,439.42	$21,293,930.36	$24,457,615.60

If you have any further questions, please contact me at (860) 713-5469. Best wishes for a happy and healthy new year to you and you staff.

Sincerely,

Abbie T. Wotkyns
Estate Administrator

RECEIVED
JAN - 3 2007

An Affirmative Action/Equal Opportunity Employer

Senator Eric Coleman
Legislative Office Building, Room 2100
Hartford, CT 06106-1591

Dear Senator Coleman,

I am writing to you to urge you to oppose SB 431 and HB 5598. These bills were submitted by Judge James J. Lawlor, Probate Court Administrator. I was the staff accountant/auditor at the Office of Probate Administration from July 1990 until May 2005. I quit when I decided that Judge Lawlor was not a person for whom I could work.

- Judge Lawlor's ultimate plan is to reduce the number of Probate Courts to 25-30 large courts that would operate like his court in Waterbury. Probate Courts in towns such as Windsor and Bloomfield would be combined into large regional courts.
- Much of the statistical analysis provided by Judge Lawlor is faulty. Using a model developed by Judge Lawlor, Chief Justice Sullivan announced at the 2004 Probate Assembly annual meeting that the probate system would operate at a deficit in 2004 and thereafter. Judge Lawlor created the deficit by underestimating system revenue and overestimating the expenses of his own office. A retired state auditor hired by Judge Lawlor to review the analysis pointed out the faults, but his comments were ignored.
- Judge Lawlor is constantly invoking a financial crisis in the probate system. His proposal to make probate clerks state employees would increase the probate system expenses significantly. While a few clerks are paid more than their counterparts in the Judicial department, far more clerks are paid less than comparable state employees.
- HB 5598 contains a provision to make all probate court clerks state employees. However, HB 5598 also contains a provision regarding the probate clerks' medical insurance that requires them to pay more for coverage than current state employees pay.
- SB 431 contains a provision that would allow a Judge or clerk to receive a pension if they serve as few as four years and their district is merged into another district. This provision would allow a Judge or clerk, some as young as their 20's or 30's, to receive free medical insurance for life, for themselves and their spouses. This is an extremely generous gift from a system facing financial crisis.
- Information routinely disseminated by prior Administrators is withheld by Judge Lawlor. This is evidenced by the numerous FOI requests filed by Probate Judges to obtain meaningful information from the Administration office.

On more than one occasion Judge Lawlor stated that he reports to the Chief Justice and no one else. Therefore, he does not have to be concerned about following recommendations by the state auditors. If you give him the powers contained in these bills it will be the last time you have any control over what he does.

Sincerely,

/s/ DAVID SALTZMAN
David Saltzman
616 Palisado Avenue
Windsor, CT 06095

RECEIVED
APR 18 2006
BROOKFIELD PROBATE COURT

		Comparative Report 2005 (OPCA)			
District	**Gross Revenue**	**Op Expense**	**Staff**	**Judges**	**Net Income**
Andover	$84,844	$4,780	$36,384	$40,670	$3,009
Ashford	$15,129	$1,197	$0	$13,932	$1
Avon	$173,329	$4,489	$37,961	$68,045	$62,833
Berlin	$573,639	$49,177	$250,079	$98,906	$175,477
Bethany	$61,401	$12,898	$0	$22,968	$25,535
Bethel	$72,859	$1,322	$26,236	$41,886	$3,415
Bloomfield	$363,804	$11,339	$88,783	$81,478	$182,205
Bozrah	$11,868	$696	$2,860	$8,311	$1
Branford	$287,360	$12,321	$70,942	$78,498	$125,599
Bridgeport	$709,681	$138,052	$460,941	$98,906	$11,782
Bristol	$308,812	$49,457	$178,094	$78,660	$2,602
Brookfield	$108,196	$10,987	$28,624	$54,070	$14,515
Brooklyn	$29,147	$381	$0	$28,196	$570
Burlington	$32,464	$1,192	$10,241	$20,968	$64
Canaan	$66,770	$6,094	$27,908	$31,798	$970
Canton	$71,270	$5,887	$10,571	$47,845	$6,967
Cheshire	$187,446	$18,616	$79,044	$59,371	$30,416
Clinton	$99,413	$1,670	$22,709	$55,656	$19,378
Colchester	$92,990	$7,540	$49,074	$34,875	$1,502
Cornwall	$36,307	$1,153	$2,518	$12,548	$20,089
Danbury	$354,857	$27,721	$128,958	$98,906	$99,272
Darien	$389,541	$30,645	$108,840	$80,796	$169,260
Deep River	$40,412	$2,970	$10,510	$26,545	$386
Derby	$297,826	$32,207	$104,248	$72,685	$88,686
East Granby	$20,092	$1,789	$0	$17,928	$375
East Haddam	$46,837	$331	$11,700	$33,540	$1,266
East Hampton	$52,650	$5,475	$13,710	$32,400	$1,065
East Hartford	$304,794	$37,580	$148,612	$65,589	$53,013
East Haven	$131,396	$7,483	$61,532	$51,630	$10,751
East Lyme	$112,478	$11,381	$39,840	$51,067	$10,189
East Windsor	$179,889	$5,961	$62,259	$64,203	$47,466
Eastford	$12,895	$379	$0	$12,515	$1
Ellington	$245,672	$34,695	$124,826	$58,462	$27,689
Enfield	$196,895	$12,589	$65,448	$65,641	$53,218
Essex	$154,717	$4,925	$54,267	$60,805	$34,720
Fairfield	$904,939	$41,519	$231,080	$92,353	$539,987
Farmington	$265,333	$11,593	$75,259	$75,251	$103,230
Glastonbury	$308,303	$20,564	$103,050	$76,182	$108,507
Granby	$64,522	$2,583	$12,636	$44,573	$4,729
Greenwich	$1,483,507	$54,669	$310,490	$98,906	$1,019,441
Griswold	$44,347	$2,198	$17,393	$24,507	$249
Groton	$328,593	$26,843	$80,256	$79,368	$142,125
Guilford	$203,067	$14,145	$41,120	$70,649	$77,153
Haddam	$34,565	$3,208	$6,198	$24,889	$270
Hamden	$462,153	$17,751	$82,911	$85,582	$275,909
Hampton	$12,535	$993	$0	$10,152	$1,390
Hartford	**$659,925**	**$81,120**	**$518,232**	**$98,906**	**($38,333)**
Harwinton	$35,854	$2,270	$10,105	$18,288	$5,191
Hebron	$31,180	$1,339	$7,773	$19,152	$2,916
Kent	$20,528	$683	$10	$19,835	$0

		Comparative Report 2005 (OPCA)			
District	Gross Revenue	Op Expense	Staff	Judges	Net Income
Killingly	**$93,404**	**$14,177**	**$40,315**	**$38,961**	**($48)**
Killingworth	$40,699	$5,994	$1,675	$30,100	$2,930
Ledyard	$65,038	$6,326	$15,300	$40,469	$2,942
Litchfield	$157,595	$9,488	$30,641	$65,362	$52,104
Lyme	$85,597	$2,046	$9,219	$15,984	$58,348
Madison	$179,782	$2,360	$31,540	$70,361	$75,521
Manchester	$391,766	$33,032	$153,761	$78,542	$126,430
Mansfield	$202,506	$31,521	$21,185	$70,949	$78,852
Marlborough	$22,413	$886	$6,660	$14,866	$1
Meriden	$302,265	$46,778	**$92,569**	$72,917	$90,001
Middletown	$484,190	$88,051	$205,768	$98,906	$91,466
Milford	$371,267	$11,377	$91,383	$81,718	$186,789
Montville	$82,894	$7,849	$15,410	$50,257	$9,379
Naugatuck	$161,077	$4,749	$68,182	$59,246	$28,900
New Canaan	$502,764	$48,014	$114,749	$85,045	$254,956
New Fairfield	$111,176	$6,238	$18,577	$58,514	$27,846
New Hartford	$76,170	$5,960	$20,522	$44,824	$4,864
New Haven	$655,175	$98,460	$451,118	$98,906	$6,691
New London	$407,667	$56,661	$139,348	$84,090	$127,568
New Milford	$212,910	$9,533	$73,195	$67,905	$62,276
Newington	$670,311	$51,215	$251,121	$98,906	$269,069
Newtown	$169,786	$11,191	$38,351	$65,918	$54,326
No. Branford	$160,958	$5,269	$32,254	$66,556	$56,879
No. Haven	$189,336	$3,873	$53,014	$68,346	$64,103
No. Stonington	$29,663	$3,379	$8,630	$17,653	$1
Norfolk	$30,819	$2,291	$0	$28,528	$0
Norwalk	$851,388	$104,365	$330,105	$98,906	$318,012
Norwich	$325,602	$50,939	$98,962	$74,834	$100,867
Old Lyme	$126,295	$5,358	$15,744	$47,736	$57,457
Old Saybrook	$163,493	$4,755	$32,778	$62,928	$63,031
Orange	$147,792	$6,886	$40,909	$61,869	$38,129
Oxford	$50,887	$1,096	$8,769	$38,677	$2,345
Plainfield	$75,074	$2,929	$36,682	$34,099	$1,365
Plainville	$104,483	$7,164	$23,088	$55,482	$18,750
Plymouth	$48,994	$1,020	$13,452	$33,298	$1,224
Pomfret	$48,363	$475	$2,085	$32,101	$13,702
Portland	$53,820	$1,445	$4,245	$33,926	$14,204
Putnam	$41,899	$6,613	$19,463	$15,823	$1
Redding	$166,148	$2,459	$20,580	$38,843	$104,266
Ridgefield	$264,253	$6,194	$47,337	$78,830	$131,892
Roxbury	$41,868	$2,687	$4,746	$22,639	$11,796
Salem	$20,326	$3,949	$0	$14,976	$1,401
Salisbury	$132,813	$4,678	$22,940	$47,952	$57,243
Saybrook	$77,324	$4,689	$9,881	$33,442	$29,312
Sharon	$36,596	$765	$9,420	$25,069	$1,342
Shelton	$273,166	$16,561	$97,951	$72,277	$86,377
Simsbury	$212,201	$8,779	$72,631	$68,027	$62,764
Southbury	$436,885	$26,329	$87,884	$100,032	$222,640
Southington	$227,161	$17,343	$104,881	$62,856	$42,081
Stafford	$141,954	$10,834	$47,586	$57,807	$25,726

		Comparative Report 2005 (OPCA)			
District	**Gross Revenue**	**Op Expense**	**Staff**	**Judges**	**Net Income**
Stamford	$1,049,180	$97,033	$282,414	$98,906	$570,827
Stonington	$243,491	$21,123	$31,995	$77,035	$113,338
Stratford	$398,263	$25,001	$167,164	$78,599	$127,500
Suffield	$136,379	$11,805	$34,768	$56,952	$32,854
Thomaston	$29,149	$3,927	$0	$24,949	$273
Thompson	$35,191	$6,809	$0	$25,992	$2,389
Tolland	$82,872	$3,953	$28,442	$45,336	$5,140
Torrington	$272,699	$27,299	$83,434	$72,774	$89,192
Trumbull	$533,643	$33,919	$123,564	$85,949	$290,212
Wallingford	$261,196	$14,180	$96,726	$71,022	$79,268
Washington	$96,983	$12,094	$5,459	$40,320	$39,110
Waterbury	$725,230	$76,672	$355,557	$98,906	$194,095
West Hartford	$993,657	$79,769	$247,842	$98,906	$567,140
West Haven	$291,308	$19,737	$169,966	$98,906	$2,699
Westbrook	$56,117	$18,801	$0	$35,673	$1,643
Westport	$526,273	$41,469	$118,074	$85,713	$281,017
Winchester	$118,197	$17,685	$34,807	$53,292	$12,414
Windham	$117,296	$6,374	$37,055	$55,391	$18,477
Windsor	$172,786	$10,573	$58,258	$62,660	$41,295
Windsor Locks	$69,027	$1,056	$28,340	$37,634	$1,997
Woodbridge	$106,040	$6,929	$37,625	$39,240	$22,246
Woodbury	$205,311	$26,084	$48,292	$70,920	$60,015
Woodstock	$49,215	$4,994	$0	$26,223	$17,998
Total Revenue	$27,282,547	$2,269,174	$8,940,615	$6,836,448	$9,236,311
Operating Exp	($18,046,236)				
Net Income	$9,236,311				
	$9,274,692				

COMPARISON OF JUDGE LAWLOR WITH HIS PREDECESSOR
PCA staff has mushroomed from 13 employees in 2002 to 20 employees in 2007

2002 PCA STAFFER	POSITION	2007 PCA STAFFER WITH ANNUAL SALARY	
Judge Kurmay	**Position**	**Judge Lawlor**	**146,780**
Linda Dow	Attorneys	Tom Gaffey	110,282
Tom Gaffey		Debra Cohen	76,488
		Helen Bennet	73,368
Alison Green	Legal Assistant	Alison Green	57,765
Kathleen Cull	Administrative Assistant	Sue Dornfried	54,544
		Pat Tarca (contract)	
Winnie Sumner	Computer Dept.	George Texeira (contract?)	
Sue Scotti		Sue Scotti	67,456
		Ann Brennan	53,372
		Winnie Sumner (contract)	
Judy Robertson	Finance/Business Dept	Alyce Cariseo	83,127
Carol Souza		Carol Souza	58,889
Cynthia Mitchell		Willette Frank	34,643
Del Wright		Paula Gilroy	32,407
Jane Obert		Alison Blair	34,643
Dianna Orvis		Barbara Aszklar	32,250
		Judy Robertson (contract)	
		Jane Obert	34,180 (p/t)
		Dianna Orvis	44,251
David Saltzman		6 Contract auditors	

New Positions under Judge Lawlor

Position		
Legislative Assistant	Vinny Russo	54,544
Social Services	Kim Joyner	94,335
Additional New Employees	Nuno Fernandez	62,809
	Stephanie Janes	57,565
	Amy Benjamin	57,565

TOTAL EMPLOYEES			
13 (NO CONTRACTORS)		**20 Plus Numerous Contractors**	
'01-'02 Total Salaries	$831,582	06-07 Salary Of 20 Employees	$1,321,263
01-02 Staff Benefits	$374,076	05-06 Staff Benefits	$664,258
TOTAL	**$1,205,658**	**TOTAL (60% INCREASE)**	**$1,985,521**

OLR RESEARCH REPORT

March 23, 2007 2007-R-0269

PROBATE COURT ADMINISTRATOR'S OFFICE, REGIONAL COURTS, AND YOUTH IN CRISIS PROGRAM

For: Honorable Eileen M. Daily

By: George Coppolo, Chief Attorney

You asked us to update of 2005-R-0911 concerning the personal service contracts of the Office of Probate Court Administrator. In addition, you asked for:

1. a breakdown of all full- and part-time employees of the Office of the Probate Court Administrator and their salaries;

2. a breakdown of all full- and part-time employees of the Regional Children's Courts and the Youth in Crisis Pilot Program in Middletown including their salaries, and personnel whose salaries are paid from other sources and the names of those sources;

The information in this report was provided by Probate Judge James J. Lawlor, the probate court administrator. Table 1 provides the names and salaries of all employees of the Probate Court Administrator's Office.

Mary M. Janicki, Director
Phone (860) 240-8400
FAX (860) 240-8881
http://www.cga.ct.gov/olr

Connecticut General Assembly
Office of Legislative Research

Room 5300
Legislative Office Building
Hartford, CT 06106-1591
Olr@cga.ct.gov

Table 1: Names and Salaries of Employees of the Office of Probate Court Administrator

Employee	*Annual Salary*
Judge Lawlor	$146,780
Tom Gaffey	110,282
Kimberly Doyle Joyner	94,335
Debra Cohen	76,488
Helen Bennet	73,368
Alison Green	57,765
Susan Dornfried	54,544
Stephanie Janes	57,565
Amy Benjamin	57,565
Vincent Russo	54,544
Nuno Fernandes	62,809
Ann Brennan	53,372
Susan Scotti	67,456
Alyce Cariseo	83,127
Carol Souza	58,889
Susan Jane Obert (part-time)	34,180
Dianna Orvis	44,251
Willette Frank	34,643
Alison Blair	34,643
Paula Gilroy	32,407
Barbara Aszklar	32,250
Total	$1,321,263

Table 2 updates a 2005 OLR report (2005-R-0091) concerning personal service contracts.

Table 2: Personal Service Contracts for Office of Probate Court Administrator for FY 2005-06 and 2006-07.

Name of Person or Entity	*Amount Paid*	*Time Frame*	*Fiscal Year*
Atlas Management LLC	$19,624.50	12.1.2005 - 6.26.2006	2005 - 06
	7,515.00	8.3.2006 - 10.2.2006	2006 - 07
Carol A. LePage	2,338.02	12.6.2005 - 6.23.2006	2005 - 06
	1,546.09	7.31.2006 - 1.30.2007	2006 - 07
Charles A. Bannon	2,775.00	12.20.2005 - 3.15.2006	2005 - 06
	6,975.00	8.3.2006 - 1.3.2007	2006 - 07
Cipriano Training & Development Inc.	4,985.00	2.2.2006	2005 - 06
	5,215.00	9.28.2006 -	2006 - 07

Table 2: Continued

Name of Person or Entity	Amount Paid	Time Frame	Fiscal Year
		1.16.2007	
Crane Enterprises Inc.	9,460.78	12.202005 - 6.5.2006	2005 - 06
	6,922.50	7.26.2006 - 1.16.2007	2006 - 07
David D. Biklen	1,890.00	3.9.2006	2005 - 06
	4,785.00	1.2.2007 - 1.22.2007	2006 - 07
Heidi Famiglietti	19,395.00	1.27.2006 - 6.23.2006	2005 - 06
	13,620.00	7.18.2006 - 1.25.2007	2006 - 07
Holt Wexler & Farnam LLP	3,000.00	1.12.2006	2005 - 06
Joseph F. Murphy	2,070.00	3.20.2006	2005 - 06
	4,200.00	10.30.2006	2006 - 07
Judith Robertson	8,530.00	2.8.2006 - 6.9.2006	2005 - 06
	7,780.00	7.26.2006 - 1.23.2007	2006 - 07
Karen Wagner	2,605.50	3.15.2006 - 6.26.2006	2005 - 06
	8,363.25	8.8.2006 - 1.2.2007	2006 - 07
Mary Gentile	28,644.00	1.13.2006 - 6.23.2006	2005 - 06
	13,557.50	1.16.2007	2006 - 07
Meghan E. Liljedahl	1,530.75	6.22.2006 - 6.27.2006	2005 - 06
	3,480.62	7.24.2006 - 1.2.2007	2006 - 07
Patricia P. Tarca	13,251.44	12.1.2005 - 6.21.2006	2005 - 06
	10,371.68	7.13.2006 - 1.25.2007	2006 - 07
Paul DiLorenzo	9,640.00	1.2.2007	2006 - 07
Quaker Farms Consulting LLC	110,128.75	11.30.2005 - 6.26.2006	2005 - 06
	76,641.25	10.5.2006 - 1.29.2007	2006 - 07
Thomas F. Casey	45,799.08	2.3.2006 - 6.23.2006	2005 - 06
	25,975.90	9.15.2006 - 1.23.2007	2006 - 07
William E. Ryan & Co LLC	20,868.89	1.23.2006 -	2005 - 06

Table 2: Continued

Name of Person or Entity	Amount Paid	Time Frame	Fiscal Year
		4.7.2006	
	30,510.99	7.26.2006 - 1.23.2007	2006 - 07
William J. Bergin Jr.	3,420.00	4.7.2006	2005 - 06
	14,478.00	7.27.2006 - 1.16.2007	2006 - 07
William P. Lavernoich	1,560.00	1.18.2006 - 3.24.2006	2005 - 06
	555.00	11.2.2006	2006 - 07
Winifred C. Sumner	26,100.00	2.9.2006 - 6.26.2006	2005 - 06
	16,391.25	8.8.2006 - 1.25.2007	2006 - 07
Total	$596,500.74		

The Probate Court Administrator asked us to get the information about the children's courts and the Youth in Crisis Pilot Program directly from the courts. We have requested this information from them and will forward it as soon as we receive it.

GC:dw

OLR RESEARCH REPORT

December 20, 2005 2005-R-0911

PROBATE COURT ADMINISTRATOR-CONTRACT EMPLOYEES

By: George Coppolo, Chief Attorney

You asked us to provide information about personal service contracts entered into by the current probate court administrator' office (PCA) entered into in recent years.

According to information provided to us by the PCA, the total amount the PCA has spent on personal service contracts for fiscal years from 2003 through 2006 to date amounted to $542,932. A fiscal year runs from July 1 of one year to June 30 of the following calendar year. For example, fiscal year 2003 covers the period July 1, 2002 to June 30, 2003. Table 1 shows the total amount the PCA's office spent each fiscal year for service contracts.

Table 1: Amounts Spent on Personal Service Contracts for Fiscal Years 2003-2006

Fiscal Year	*Amount Spent*
2003	$54,265
2004	$294,200
2005	$177,094
2006 to date	$ 71,638

Table 2 provides a breakdown of these contracts for each fiscal year. This table includes the name of the person, law firm, or other entity that was paid for personal services, the payment date or period, and the total amount paid. The PCA did not provide this detailed information for

Mary M. Janicki, Director
Phone (860) 240-8400
FAX (860) 240-8881
http://www.cga.ct.gov/olr

Connecticut General Assembly
Office of Legislative Research

Room 5300
Legislative Office Building
Hartford, CT 06106-1591
Olr@cga.ct.gov

personal service contracts during the fiscal year 2003 but instead reported that it paid $54,265 for personal services during that fiscal year.

Table 2: Personal Service Contracts By Fiscal Year

Fiscal Year	Professional Service Contracts and Code	Name of Person or entity	Time Frame	Amount Paid
2002-03		not provided	02/03 FY	$54,265
2003-04	Professional Fees – 51230*	Robinson and Cole	11/18/2003	1,400.00
		Mellon Consultants LLC	8/15/2003 - 6/18/2004	52,341.97
		Baxter Communications	10/9/2003	275.00
		Casey Family Services	12/4/2003	6,510.00
		Susan R Reyher	6/3/2004	2,130.00
		Integrated Corporate Relations INC	8/19/2003 - 6/16/2004	35,855.17
		Judith Robertson	10/3/2003 - 6/17/2004	6,650.00
		Cummings and Lockwood (NH Pilot Program)	4/28/2004	4,875.00
		Crane Enterprises INC (NH Pilot Program)	6/2/2004	4,000.00
		Susman Duffy & Segaloff (NH Pilot Program)	6/2/2004 - 6/14/2004	3,500.00
		Casey Family Services	4/28/2004	40,000.00
2003-04	Professional Fees – 53715**	CT Micro CORP	12/19/2003 - 8/18/2003	570.00
		Heidi Familglietti	6/8/2004	8,250.00
		Quaker Farms Consulting LLC	10/8/2003 - 6/18/2004	115,662.50
		Robert H. Clemens	9/2/2003	1,256.25
		Winifred C. Sumner	11/10/2003 - 6/18/2004	10,923.75
2004-05	Professional Fees - 51230	Buck Consultants LLC	8/2/2004 - 6/14/2005	53,620.00
		David D. Biklen	11/8/2004 - 3/24/2005	10,215.00
		Susan R Reyher	8/9/2004 - 1/18/2005	2,910.00
		Robert J. Hilliard	10/28/2004	877.50
		Cipriano TRNG & Development	10/22/2004 - 1/4/2005	800.00
		Crane Enterprises Inc	9/7/2004 - 6/8/2005	21,425.00
		Susman Duffy & Segaloff	1/25/2005	1,070.00
		Martha Morrison Dore	1/25/2005 - 6/15/2005	12,500.00

Table 2 (continued)

Fiscal Year	Professional Service Contracts and Code	Name of Person or entity	Time Frame	Amount Paid
		Judy M. Lee	1/25/2005 - 6/15/2005	60,850.00
		Patricia P. Tarca	2/22/2005 - 6/1/2005	7,997.44
		Deborah J. Tedford & Associates PC	3/3/2005	4,830.00
2005-date	Professional Fees - 51230	Buck Consultants LLC	7/15/2005	4,500.00
		Charles A. Bannon	9/21/2005 - 11/22/2005	1,925.00
		Crane Enterprises INC	9/8/2005 - 11/04/2005	3,997.50
		Judy M. Lee	7/13/2005 - 9/20/2005	15,200.00
		Martha Morrison Dore	9/21/2005	1,250.00
		Patricia P. Tarca	7/11/2005 - 11/17/2005	10,042.24
		William E. Ryan & Co LLC	9/23/2005 - 11/17/2005	9,537.25
2005-date	Professional Fees - 53715	Carol A. LePage	8/1/2005 - 9/20/2005	998.10
		Heidi Familglietti	8/10/2005 - 9/16/2005	4,665.00
		Quaker Farms Consulting LLC	10/6/2005	19,522.50

* Code 51,230 is for consulting services
** Code 53,715 is for information technology consulting services

Table 3 provides the same information as Table 2 except it is arranged by the person, law firm, or entity that was paid in connection with a personal service contract. According to the PCA, personal service contracts were entered into with at least 26 people, law firms, or other entities in Fiscal years 2004, 2005, and 2006. The PCA did not provide this detailed information for personal service contracts during the fiscal year 2003.

Table 3: Personal Service Contracts by Person, Law Firm, or Entity

Name of Person or entity	Amount Paid	Time Frame	Fiscal Year	Professional Service Contracts and Code
Baxter Communications	$275.00	10/9/2003	2003-04	Professional Fees - 51230

Table 3 (continued)

Name of Person or entity	Amount Paid	Time Frame	Fiscal Year	Professional Service Contracts and Code
Buck Consultants LLC	53,620.00	8/2/2004 - 6/14/2005	2004-05	Professional Fees - 51230
Buck Consultants LLC	4,500.00	7/15/2005	2005-date	Professional Fees - 51230
Carol A. LePage	998.10	8/1/2005 - 9/20/2005	2005-date	Professional Fees - 53715
Casey Family Services	6,510.00	12/4/2003	2003-04	Professional Fees - 51230
Casey Family Services	40,000.00	4/28/2004	2003-04	Professional Fees - 51230
Charles A. Bannon	1,925.00	9/21/2005 - 11/22/2005	2005-date	Professional Fees - 51230
Cipriano TRNG & Development	800.00	10/22/2004 - 1/4/2005	2004-05	Professional Fees - 51230
Crane Enterprises Inc	21,425.00	9/7/2004 - 6/8/2005	2004-05	Professional Fees - 51230
Crane Enterprises INC	3,997.50	9/8/2005 - 11/04/2005	2005-date	Professional Fees - 51230
Crane Enterprises INC (NH Pilot Program)	4,000.00	6/2/2004	2003-04	Professional Fees - 51230
CT Micro CORP	570.00	12/19/2003 - 8/18/2003	2003-04	Professional Fees - 53715
Cummings and Lockwood (NH Pilot Program)	4,875.00	4/28/2004	2003-04	Professional Fees - 51230
David D. Biklen	10,215.00	11/8/2004 - 3/24/2005	2004-05	Professional Fees - 51230
Deborah J. Tedford & Associates PC	4,830.00	3/3/2005	2004-05	Professional Fees - 51230
Heidi Familglietti	8,250.00	6/8/2004	2003-04	Professional Fees - 53715
Heidi Familglietti	4,665.00	8/10/2005 - 9/16/2005	2005-date	Professional Fees - 53715

Table 3 (continued)

Name of Person or entity	Amount Paid	Time Frame	Fiscal Year	Professional Service Contracts and Code
Integrated Corporate Relations INC	35,855.17	8/19/2003 - 6/16/2004	2003-04	Professional Fees - 51230
Judith Robertson	6,650.00	10/3/2003 - 6/17/2004	2003-04	Professional Fees - 51230
Judy M. Lee	60,850.00	1/25/2005 - 6/15/2005	2004-05	Professional Fees - 51230
Judy M. Lee	15,200.00	7/13/2005 - 9/20/2005	2005-date	Professional Fees - 51230
Martha Morrison Dore	12,500.00	1/25/2005 - 6/15/2005	2004-05	Professional Fees - 51230
Martha Morrison Dore	1,250.00	9/21/2005	2005-date	Professional Fees - 51230
Mellon Consultants LLC	52,341.97	8/15/2003 - 6/18/2004	2003-04	Professional Fees - 51230
not provided	54,265	02/03 FY	2002-03	NA
Patricia P. Tarca	7,997.44	2/22/2005 - 6/1/2005	2004-05	Professional Fees - 51230
Patricia P. Tarca	10,042.24	7/11/2005 - 11/17/2005	2005-date	Professional Fees - 51230
Quaker Farms Consulting LLC	115,662.50	10/8/2003 - 6/18/2004	2003-04	Professional Fees - 53715
Quaker Farms Consulting LLC	19,522.50	10/6/2005	2005-date	Professional Fees - 53715
Robert H. Clemens	1,256.25	9/2/2003	2003-04	Professional Fees - 53715
Robert J. Hilliard	877.50	10/28/2004	2004-05	Professional Fees - 51230
Robinson and Cole	1,400.00	11/18/2003	2003-04	Professional Fees - 51230
Susan R Reyher	2,130.00	6/3/2004	2003-04	Professional Fees - 51230

Table 3 (continued)

Name of Person or entity	*Amount Paid*	*Time Frame*	*Fiscal Year*	*Professional Service Contracts and Code*
Susan R Reyher	2,910.00	8/9/2004 - 1/18/2005	2004-05	Professional Fees - 51230
Susman Duffy & Segaloff	1,070.00	1/25/2005	2004-05	Professional Fees - 51230
Susman Duffy & Segaloff (NH Pilot Program)	3,500.00	6/2/2004 - 6/14/2004	2003-04	Professional Fees - 51230
William E. Ryan & Co LLC	9,537.25	9/23/2005 - 11/17/2005	2005-date	Professional Fees - 51230
Winifred C. Sumner	10,923.75	11/10/2003 - 6/18/2004	2003-04	Professional Fees - 53715

GC:ro

STATE OF CONNECTICUT
JUDICIAL BRANCH

CHAMBERS OF
JOSEPH H. PELLEGRINO, JUDGE
CHIEF COURT ADMINISTRATOR

231 CAPITOL AVEN
HARTFORD, CT 061

January 31, 2006

The Honorable James J. Lawlor
Probate Court Administrator
186 Newington Road
West Hartford, CT 06110

Dear Judge Lawlor:

Thank you for taking the time to meet with me yesterday to discuss your request for revisions to the budget of the Office of the Probate Court Administrator for the current fiscal year. I remain very concerned about the solvency of the Probate Administration Fund, particularly with respect to the burgeoning costs of operating Regional Children's Probate Courts.

I have been concerned since its inception that the significant costs of operating the original Pilot Children's Court in New Haven would result in a substantial drain on the balance of the Fund. The data you have recently provided to me strongly supports that contention. The New Haven pilot has grown from an initial operating cost estimate of $100,000 to a revision to $170,000 and now to a requested increase to $470,000. By all accounts the cost of this project will continue to escalate. I am not questioning the effectiveness of the program, and in fact all the studies I have seen indicate that the program is working well, but there is no stable funding source earmarked to continue this program in the future, particularly at this funding level.

The legislatively authorized expansion of the Children's Court to six additional sites can only result in a quicker depletion of the Fund. You have asked me to approve the expenditure of over $400,000 to cover the start-up costs of these additional sites through the end of the fiscal year, and you acknowledge that the full year costs of the new courts will be substantially higher next year. You estimate that the full operating costs of all seven projects could approach $5 million per year. At that pace, the Probate Administration Fund will be exhausted in two to three years.

Because you have been given legislative authorization to initiate these programs, I believe I have an obligation to approve your requested budget

Telephone: (860) 757-2100 Fax: (860) 757-2130 E-mail Address: Joseph Pellegrino@jud.state.ct.us

revisions. However, I do so with the following caveat. I strongly encourage you to prepare a comprehensive assessment of the annualized costs of operating all the Regional Courts and to immediately share that information with the Executive and Legislative Branches and begin discussions on the permanent funding of the programs. Otherwise there is an almost certainty that the Regional Courts would cease to operate, which would ill serve those who come before the Court and those who have worked so hard to make the program successful.

Sincerely,

Joseph H. Pellegrino, Judge
Chief Court Administrator

cc: Hon. William J. Sullivan, Chief Justice
Hon. William J. Lavery, Chief Court Administrator designee
Honorable Michael Mack, Deputy Chief Court Administrator
Thomas A. Siconolfi, Executive Director

RECEIVED
AUG 10 2006
NEW CANAAN
PROBATE COURT

STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

JUDGE JAMES J. LAWLOR
ADMINISTRATOR
ATTORNEY THOMAS E. GAFFEY
CHIEF COUNSEL
ALICE A. BRUNO
ATTORNEY
DEBRA COHEN
ATTORNEY

186 NEWINGTON ROAD
WEST HARTFORD, CT 06110

TEL (860) 231-2442
FAX (860) 231-1055

MEMORANDUM

TO: Members of the General Assembly

FROM: James J. Lawlor, Probate Court Administrator

DATE: July 19, 2006

RE: Probate Administration Fund

On July 15, the Office of the Probate Court Administrator received the final numbers for the 2005-2006 fiscal year, which closed June 30. This report reflects the combined activities of my office and the various courts. It shows that we are facing our first significant deficit within the probate court system.

I have enclosed the Probate Administration Fund financial figures for the fiscal year, projections for the fund through 2010, and supporting financial schedules.

This information shows that at the end of the most recent fiscal year, the Probate Court System operated at a $3.2 million deficit. Based on this data, it is projected that in fiscal year 2008-2009, the Probate Administration Fund will be insolvent.

Unfortunately, my office has long-predicted this outcome.

These figures demonstrate the need for immediate reform. Please contact me if you have any questions or you wish to discuss this further.

JJL:kew

Enclosures

C
Connecticut General Statutes Annotated Currentness
Title 45A. **Probate Courts** and Procedure (Refs & Annos)
Chapter 801. **Probate Court**: Administrative Provisions (Refs & Annos)
Part I. **Probate Courts** in General (Refs & Annos)

§ 45a-8. Probate Court facilities. Minimum standards. Failure to provide suitable **facilities**. Consolidation, separation and creation of **probate** districts

(a) The town or towns comprising each **probate** district shall provide court **facilities** meeting the minimum standards required by this section. If a **probate** district consists of more than one town, the expense shall be allocated to the towns in proportion to their grand lists last perfected. Such court **facilities** shall include: (1) Office space appropriate for the conduct of judicial business, including (A) a room for the judge of **probate** sufficient in size for ordinary matters in which judicial proceedings may be conducted in private, (B) a separate room for the court staff, and (C) on a prearranged basis, access to a larger hearing room for the conduct of unusually large court hearings; (2) furniture and furnishings appropriate to a court facility; (3) use and maintenance of a copying machine and the necessary supplies; (4) use and maintenance of microfilming equipment and the necessary supplies, including record books or the equipment to produce records; (5) the necessary stationery, postage and other related supplies in order that the court may properly carry out its duties; (6) typing equipment with which to complete the necessary records; (7) basic telephone service, which shall include all local calls; (8) if a court is computerized, a dedicated telephone line and maintenance of the computer equipment; and (9) adequate liability, fire, loss, theft and replacement insurance on the furniture, furnishings, equipment, court **facilities** and the records of the court.

(b) If a town or towns comprising a **probate** district and the responsible municipal official or officials within such **probate** district fail to provide the court **facilities** required by subsection (a) of this section, the **Probate Court** Administrator shall offer in writing to meet with the judge of **probate** of the district and the responsible official or officials to discuss such court **facilities**. After discussion and consideration of the circumstances of the **court** operations, the **Probate Court** Administrator may waive or modify the application of a particular requirement of subsection (a) of this section for court **facilities**.

(c) If suitable court **facilities** are not provided in accordance with subsection (a) or (b) of this section: (1) The **Probate Court** Administrator shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary concerning the failure of the **probate** district to provide the required court **facilities**, together with a recommendation that the **probate** district be abolished as a separate district and be consolidated with a contiguous district where suitable court **facilities** can be provided; or (2) if, in the opinion of the **Probate Court** Administrator, abolition of the district is not in the public interest and judicial action is necessary to enforce the provision of suitable **court facilities**, the **Probate Court** Administrator shall bring an action in the Superior Court to enforce the requirements for the provision of suitable court **facilities**.

(d) Any town located in a **probate** district that desires to (1) consolidate such **probate** district

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with one or more districts, (2) be removed from such **probate** district to a separate district established for any such town, or (3) be located in another **probate** district, may, by resolution of its legislative body, petition the General Assembly for such consolidation, separation and creation of a new **probate** district or relocation. The **Probate Court** Administrator shall provide such assistance in the preparation of the petition as the officials of the town or towns may request. At the time of submission of a petition to the General Assembly, a copy of the petition shall be sent to the judges of probate in the probate districts to be affected. No probate district may be consolidated with another district until the expiration of the term of office of any probate judge in an affected probate district.

(e) Each judge of probate shall provide suitable records and supplies, in accordance with subsection (a) of this section, for the court in the judge's district. The judge of probate shall cause a complete record to be made of all orders passed by such court and of all wills, inventories, distributions, accounts, bonds and returns made to or lodged with such court. The expense of records, microfilming or the equipment to produce records, and of supplies which the judge deems necessary shall be paid, upon the order of the judge, by the town or towns composing the district in proportion to their grand lists last perfected.

(f) When the **Probate Court** Administrator, by regulation, requires that the **courts** of **probate** use specified forms, education materials, supplies or equipment not otherwise required by this section, they shall be furnished by the **Probate Court** Administrator and the expense paid from the fund established under section 45a-82.

CREDIT(S)

(1949 Rev., § 6820; 1958 Rev., § 45-12; 1969, P.A. 519, § 1, eff. June 24, 1969; 1980, P.A. 80-476, § 4, eff. Oct. 1, 1980; 1993, P.A. 93-279, § 1, eff. Oct. 1, 1993; 2003, P.A. 03-278, § 96, eff. July 9, 2003; 2004, P.A. 04-257, § 66, eff. June 14, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

Transfer of Section

This section, formerly set out as C.G.S.A. § 45-12, was transferred to C.G.S.A. § 45a-8 in Gen.St., Rev. to 1991.

Codification

Gen.St., Rev. to 1995, changed the section heading from "Record books, records and supplies" to "**Probate court facilities**. Minimum standards. Failure to provide suitable **facilities**. Consolidation, separation and creation of **probate** districts".

Amendments

1969 Amendment. 1969, P.A. 519, § 1, added the former last sentence which related to payment of such books, forms, etc. required by the **probate court** administrator.

1980 Amendment. 1980, P.A. 80-476, § 4, divided and rewrote this section which formerly

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STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

JAMES D. McGAUGHEY
Executive Director

Phone: 1/860-297-4307
Confidential Fax: 1/860-297-4305

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee
March 30, 2007

Presented by James D. McGaughey
Executive Director

HB5675

Good afternoon and thank you for this opportunity to comment on several of the bills on your agenda today.

The first of these are **Raised Bill No. 1439, AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS;** and, **Raised Bill No. 1453, AN ACT CONCERNING THE TRANSFER OF AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.**

These bills grow out of frustrations shared by advocates for people who are elderly and people who have disabilities over the widespread failure of our current involuntary representation mechanism to respect the rights and expressed preferences of people who are being considered for, or are actually living under court ordered representation by a conservator. Our Office has served a number of people who could manage some of their own affairs, and might have been candidates for some carefully tailored limited representation by a conservator, but were simply stripped of all their decision-making authority and placed under full conservatorship. Many people with disabilities have been placed into nursing homes or other long term care arrangements by conservators, have had their homes sold, their apartment leases terminated, and their furniture and other possessions disposed of by those same conservators. In some jurisdictions it is not unusual to find the same individual appointed to be conservator for a number of people who have been placed into local residential care homes or nursing homes, and to learn that that conservator has collected substantial fees for these questionable "services" performed on behalf of their multiple wards. While ostensibly aimed at preserving the ward's assets, these actions actually operate to greatly limit the person's prospects for recovering his or her place in the community, and moving on with life, effectively consigning these individuals to long term careers as "mental patients". Not infrequently, and not surprisingly, we find that the person who is the alleged beneficiary was not consulted concerning these actions and only learned of them after-the-fact.

To be sure, many conservators faithfully fulfill their duties and do try to determine the preferences of the person and to act in his or her best interests. Similarly, many probate judges take seriously their responsibility to inquire into and fully consider all evidence, apply the appropriate statutory standards, and to exercise continuing supervision over conservators they appoint. However, we have also seen probate courts waive without explanation, procedural and substantive safeguards established in statute. And, many people under involuntary representation report to us that they have not had any contact with their conservator for many

months or even years, and that they do not know how to independently contact him or her. All they know is that their conservators disposed of their property and apparently want them to remain institutionalized.

Many factors contribute to this phenomenon: The informality of probate proceedings, the level of practice and role confusion exhibited by appointed counsel, unacknowledged conflicts of interest, and across the board ignorance of the principles and possibilities of recovery and rehabilitation. One of the biggest flaws is that the mechanism of conservatorship itself often operates to fulfill its own expectations both as to the complete incapability of the person, and the course of decisions and actions that the conservator is expected to follow. In practice, conservatorship often operates as an intrusive, blunt instrument when what is needed is a sensitive, individually tailored, respectfully implemented response to the demonstrated vulnerabilities of a particular human being - vulnerabilities that should have to be clearly established by objective evidence, and then responded to by crafting individualized, transparent safeguards that make sense in the context of the person's life circumstances. Although our current statutes allow courts to limit the duties and powers of conservators of the estate and of the person, the burdens for judicial inquiry and explicit justification still operate so as to create a considerable bias in favor of appointing full conservators.

The reforms proposed in these bills would certainly move things in a better direction. R.B. 1439 creates a preference for the least restrictive form of intervention. It establishes a "rebuttable presumption" that the ward should retain authority in as many decision-making domains as possible; clarifies that when a person who is being considered for conservatorship, he or she must receive specific notice of the potential consequences of being adjudicated incapable; clarifies the role of appointed counsel; protects previous decisions the person has made regarding surrogate decision makers. R.B. 1453 repeats and expands on several of these concepts and would also establish concurrent jurisdiction over petitions for conservatorship in both courts of probate and superior courts. I understand that since these bills were drafted representatives from advocacy groups, the bar association, legal services and the probate courts have continued to work on language that would reconcile some of the differences between these bills and improve on several provisions not addressed in either. I believe you will hear from participants in that process, and, based on the drafts I have read, I believe that the work they have done merits careful consideration. It represents a consensus amongst factions that have historically been at loggerheads. More importantly, it reflects sound, comprehensive policy reform in an area of law that desperately needs it.

I would also like to briefly comment on **Committee Bill No. 5675, AN ACT CONCERNING THE DURATION OF PSYCHIATRIC EVALUATIONS.** This bill would extend the allowable timeframe for confinement in a psychiatric hospital when a person has been admitted pursuant to a physician's "emergency certificate", and the hospital seeks to confine the person beyond the fifteen day period covered by that emergency certificate. Actually there are two fifteen day periods contemplated in current law. A person can be confined for evaluation for up to fifteen days just based in the physician's emergency certificate, and then for up to an

additional fifteen days if the hospital initiates formal commitment proceedings in probate court prior to the expiration of the first fifteen day certificate. So, right now, it is possible for a person to be confined in a psychiatric hospital for up to 30 days before seeing a judge. (The law does allow the person to request a hearing to contest his or her confinement, but many are reluctant to do so as one result of a hearing may be a full-fledged commitment order.) The bill would extend this total period by another fifteen days, meaning that a person could be confined for a period of up to 45 days before seeing a court order would be required for further confinement.

Under our statutes, involuntary confinement in a psychiatric hospital under the authority of the State is only permitted when, due to a person's mental illness he or she is determined to be dangerous to himself or others or to be gravely disabled. Allowance is made for any licensed physician to order confinement for up to fifteen days just based on his or her own opinion. Beyond that, constitutionally protected liberty interests require considerably greater due process - things like a hearing, convincing evidence, opportunity to be represented by counsel, to cross examine witnesses, etc. To extend the period of potential confinement without these due process safeguards circumvents an important principle, and would weaken protections for civil rights. I understand that this bill is an attempt to address what is sometimes a "revolving door" for people who are discharged form hospitals because they do not meet the criteria for ongoing commitment but are subsequently re-admitted because their conditions deteriorate outside of the hospital environment. However, in my view it would be better to focus on developing more competent and user-friendly aftercare programming for the few people who fall into this category - things like supported housing and intensive outpatient programming - than to reduce due process protections across the board.

Thank you for your attention. If you have any questions I will try to answer them.

To Whom It May Concern:

Re: Daniel Gross, 87 yr old NY resident and Veteran, incarcerated in a Ct Nursing home against his will, without due process rights in a LOCKED WARD (at the insistance of the court appointed conservator for 10 ½ months until freed.

I agonize over what to say, my emotions always get in the way. I want everyone who reads this to know what is happening all over the United States today. But we are in Ct., and our obligations are here.

In the best words that describe the debacle that my Dad and I suffered, my father said upon being ripped from his family, "it's all about the money". Everyone wants us to believe their motives are pure—how though, did my father benefit from this tragic and bizarre nightmare?

Was the changing of the locks in his NY home?
The disappearance afterward of all the antiques there-
The proposed sale of his home
The 'Locked Ward' which he was forced into-causing stress, trauma, defeat and hopelessness
Separation from family and friends
Constant scrutiny of every word (at l hour only visits by daughter) with one or more nurses or aides sitting less than 3 ft. away
Threats not to be allowed outside visits unless he took medication (which today is the subject of serious side effects)
Chemical restraints to the extreme where Dad was disoriented and falling over
Not allowed at one point to see a picture of his dog, the newspaper, write or receive a note, have his picture taken, discuss his home in NY or all visits would be ended
Denied the right to repeated requests for his own attorney
Pick his own Dr
Return to his home; keep what he worked for all his life.

How did this benefit Dan Gross?
Were it not for the aid of some brave and brilliant attorneys that came forward Pro Bono, Articles by Rick Green of The Hartford Courant, and others, my dad would more than likely be dead by now, or at least an automaton.
Who benefited? The court appointed attorney who filled out a PC170 recommending his client be conservered, the court appointed conservator who wanted over $32,000 to keep my father locked up without hope, declining, denied the right to a hearing aid, his own doctors, and forced to share a room with a resident who hit him (we later found he was involved in a double murder in the 70's).

Who benefited? Who cared? Do you? Show us by adopting these bills and more!
The Probate System fosters cronyism and inbreeding, it begs for change.

Will you, the Ct. legislators take the time to learn the truth and stand up for what is right? It is not about us, but the right of every human being-and our very valuable population – The elderly. Give them what they deserve—the best!!

I am Carolyn Dee King and am available to discuss with anyone who wants to learn the Truth—I offer my services freely 203/597-9693 or dee2king@aol.com
I support bills # 1439 #1453 and ask your endorsement as well.

STATE OF CONNECTICUT

DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

A HEALTHCARE SERVICE AGENCY

M. JODI RELL
GOVERNOR

THOMAS A. KIRK, JR., Ph.D.
COMMISSIONER

Testimony of Paul Amble, M.D.
Chief Forensic Psychiatrist
Department of Mental Health and Addiction Services
Before the Judiciary Committee
March 30, 2007

Good morning, Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. I am Dr. Paul Amble, Chief Forensic Psychiatrist of the Department of Mental Health and Addiction Services, and I am here today to speak on **S.B. 1439, An Act Concerning Conservators and Probate Appeals.**

We wish to provide testimony on two aspects of this bill that are of concern to DMHAS.

1) The first is that Sec. 4 (h) (2) of this bill, which is relevant to our inpatient service delivery, proposes a change that is directly contrary to a provision of P.A. 06-95, passed by the General Assembly last year. In essence, H.B. 1439 (unless otherwise provided in the court's decree) requires a conservator to comply with all health care decisions made by the ward's health care representative or health care proxy. However, PA 06-195 stipulates that the conservator's health care decisions take precedence over those of a health care representative in three specified instances. We negotiated the exemptions contained in PA 06-195 last year in good faith with all the parties involved and believe we need to keep those exemptions if any changes are made at this time to the conservator statutes for the following reasons:

- In **Sec. 17a-543**, the legislature enacted "due process" related to involuntary treatment with psychiatric medications of individuals admitted to inpatient facilities on a civil basis, by creating a process for conservators to make decisions regarding treatment for patients who are unable to give informed consent.

- Sec.**17a-543(e)(1)** requires conservators to:

  "meet with the patient and the physician, review the patient's written record and consider the risks and benefits from the medication, the likelihood and seriousness of adverse side effects, the preferences of the patient, the patient's religious views, and the prognosis with and without medication."

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- In **Sec. 17a-543a**, the General Assembly accomplished the same due process procedures, but for individuals found not competent to stand trial, which is in accordance with the 2003 U.S. Supreme Court decision in ***U.S. v. Sell.***

Unless Section 4 (h)(2) of S.B. 1439 is amended to include language similar to that contained in P.A. 06-195, the legislature will be creating a conflict between two portions of the statutes, and will be potentially eliminating the ability of DMHAS inpatient facilities to seek appropriate involuntary treatment in certain circumstances — even when a patient is placing himself/herself or others at risk.

2) The second concern we wish to raise regarding S.B. 1439 is that Section 4 (h)(3) — as presently worded — will limit the pool of unbiased, neutral attorneys who may serve as conservators for individuals. We fully understand the need to protect an individual's civil rights, but we ask that you consider in your deliberations that individuals in our system may not be able to make good decisions because of their psychiatric disability.

As written, this section considerably narrows the probate court's discretion in appointing a conservator whenever a patient merely *"communicates a preference"* for a particular individual.

In addition, the section creates a new criterion for the probate court's consideration— namely, whether a proposed conservator *"has knowledge of the respondent's preferences regarding the care of his or her person."* No attorney appropriately maintained on the panel of the Probate Court Administrator is likely to meet this criterion. Thus, this new requirement may result in the selection of a conservator who is more likely to agree with an incompetent respondent's preferences, rather than one who will be able to take a neutral stance when weighing the important factors in the balance.

The combination of these two changes represents a fundamentally different approach to the way Connecticut has heretofore conceived of the nature of substituted judgment and its appropriate balancing of interests. It could substantially interfere with our ability to treat those patients who require treatment in order to be well enough to leave hospital care, thus wasting precious and finite resources. It could also substantially interfere with our ability to treat individuals who are subject to various provisions of the criminal justice system. For the above-listed reasons, we do not support S.B. 1439 as currently worded.

It is our understanding that a compromise proposal has been offered by Judge Killian and a group that worked on this matter. We have seen that version, and it does include the exemption we would require.

Thank you for the opportunity to speak on issues of concern to DMHAS related to S.B. 1439. I would be happy to take any questions you may have at this time.

CONNECTICUT PROBATE ASSEMBLY

March 30, 2007

Hon. Dianne E. Yamin
President Judge CT Probate Assembly

HB 7382 SB 1272
SB 1439

Thank you for the opportunity to speak today. I am testifying on behalf of the CT Probate Assembly in favor of two bills, and I will be commenting on two other bills.

First, S.B. No. 1437 (Raised): An Act Concerning the Date of Birth of Adopted Persons Born Outside of the Country and Notice provided by the Council on Probate Judicial Conduct.

Probate Assembly Position: The Assembly supports this bill, which would allow a Judge to correct the biological age of a child, based on medical evidence. There are presently two actual cases pending, one in Groton and one in Redding, in which the children who were born outside the U.S. were given younger birth ages, likely to improve their chances at being adopted. Medical evidence shows the difference between the age on the birth certificate and the actual age is three years in one of the cases, resulting in safety and other issues such as driving age, sports, etc.

Fourth, S.B. 1439 (Raised) An Act Concerning the Transfer of an Application for the Appointment of a Conservator to the Superior Court or Another Probate Court.

The Probate Assembly opposes this bill, as it maintains the Probate Courts are historically the best, most local, efficient jurisdiction for Conservatorships.

In place of this bill, Judge Killian's committee has developed compromise language with legal rights advocates, which he will propose, (Probate Administration's Conservator Statutes Revision Committee), which is a step in the right direction, however the Assembly has not had an opportunity to review said proposed language, hence I hereby take no position on it.

Respectfully submitted, Hon. Dianne E. Yamin, President Judge, CT Probate Assembly

STATEMENT IN SUPPORT OF RAISED S.B. 1439
AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS
SUBMITTED BY COMPANIONS & HOMEMAKERS, INC.

Companions & Homemakers, Inc. ("C&H"), a provider of homecare services for the elderly and infirm since 1990, respectfully submits this testimony in support of S.B.1439 and, in particular, Section 11 of the bill which reads:

> **Sec. 11. (NEW) (Section 45a-644a. Recording of probate proceedings.)** A Court of Probate shall cause a recording to be made of all proceedings held under sections 45a-644 to 45a-663, inclusive. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator.

C&H strongly supports this section of the Bill. Conservatorships deprive the incapacitated or disabled person of many civil rights. It is thus a drastic action and may have far-reaching implications for all persons involved. Probate judges, therefore, must exercise such great powers carefully, rationally, and with restraint. However, despite the extraordinary nature of these proceedings, often times there is no record of the proceedings.

C&H believes that keeping a recording of such hearings will bring a much needed measure of accountability and transparency to the proceedings. Judges will be motivated to carefully articulate the reasons for their rulings and decisions.

Furthermore, instead of relying on notes or memory, such recordings will provide a reliable record of the proceedings upon which the parties can rely with reasonable certainty. Indeed, while memories fade and written notes are devoid of context and can be read to mean different things, a tape of the proceedings is not susceptible to those shortcomings. Moreover, in the event of a controversy or dispute, the tape will provide unimpeachable evidence of what occurred during a particular hearing or proceeding.

C&H strongly urges the legislature to pass this Bill with Section 11 as currently written.

Hello, my name is Laura DuBrava, I live in Hamden.
My Mother has had dementia for 6 and a half years.
My oldest brother was named conservator soon after my mother was judged unable to take care of her own affairs.
In a "normal" family situation, no mater who is conservator, family would put aside any petty differences they had, to put the parent's needs first and to respect each other's needs to maintain a relationship with their parents. I believe the laws are set up now assuming this to always be the case.
Unfortunately that is not always or often what happens.
I have had to practically beg my brother to see my mother at times. He has put conditions on my visits such as limits on the amount of visits, and what I can do when I visit. If I have a problem with her care, he assumes it is something that is my fault, and cuts back my visitation. This is possible due to the vagueness of the conservator statutes. I have gone before the probate system countless times at great personal expense to just have access to my mom and to at least share in the decision making process concerning her estate and health care. Each time the probate judge seems unwilling to make a decision other than to carry on the status quo or to extend the process and charge me another $150 to come back in a few weeks. After 10 or 15 times this gets old. I have asked him to rescues himself and asked the state attorney who over sees the probate judges to intercede. I have asked the GAL appointed by the state to help for the past four years; she seems to not care as this seems to be just a check for her. Any "extra" work that this would cause her is ignored. I have no recourse because I am not the conservator.
All attempt to rein in my brother's personal vendetta against me and my mother's relationship have failed. The best I can do is to hire an attorney to try to negotiate with him via his attorney. I pay my attorney out of pocket; he takes his fee's from her estate. At this point it has been three years since my brother has given an accounting of her finances to the probate court. He does not allow me to speak, email or contact him directly. All contact not via an attorney, is via my middle brother, needless to say this put a strain on my relationship with him.

It seems that no matter how bad the conservator's behavior is, short of neglecting her physical needs, the state backs him up. No one seems to care about a daughter's love for her mom and their need to continue what has always been a close relationship and the toll of this on both of them. If I notice that she has a UTI, I am causing trouble and being nosey, even if eventually she ends up in an ICU because of it. If I find pills on her floor, I am making it up and causing problems with the facility. If my mother falls, I am automatically assumed to be at fault and prevented from seeing my mother for weeks at a time. All this has often caused great personal emotional cost to me and my mom. I believe that emotional abuse of siblings and parents should result in a serious look at a change in conservatorship. Not every one can be a good conservator; I would have better luck if a stranger off the street was it for my mom. There need to be safeguards in place and an appeals process to make sure conservators, probate judges, and GAL's do what is in the best interest of the people they are sworn to serve and help, not the easiest, least amount of work.

Testimony of Laurie Julian
Regarding S. B. No. 1439

An Act Concerning Conservators and Probate Appeals
Judiciary Committee
March 30, 2007

Senator Andrew McDonald and Representative Michael Lawlor, and members of the Committee, my name is Laurie Julian. I speak on behalf of my mother, Carolyn Crown who was involuntarily conserved. If we had in place the protections that S.B. 1439 safeguards against, my mother's right to make major life decisions would not have been violated and the family would not have gone through agonizing years of dealing with the probate court system, that benefits court appointees while depleting bank accounts that the elderly have worked hard all their lives to save. This is why we ask that not another session go by without passing this important piece of legislation.

My mother worked 17 years at the Travelers Insurance Company, retired with a pension and lives in West Hartford in the condominium she has made home for over 27 years. Despite my mother's estate planning and advanced directives in designating me her only daughter as her durable power of attorney and health care agent, the probate court in its unfettered discretion ignored her wishes, and appointed a non-family member as her conservator of the person. With the stroke of a pen, the judge stripped her of her right to make medical decisions and where to live among other liberty rights.

The system failed my mother, when it appointed Carolyn Levine as her conservator of the person. She finally resigned, but only after costly proceedings to remove her because within four months of her appointment she wanted to wrench my mother from her home and place her in a nursing facility. There were also numerous complaints to the judge of this conservator taking my mother's financial documents and prescribed medication out of the house, and other transgressions, including a volatile personality, verbally abusive behavior toward home aides, family members and even wards.

Not to say that my mother was not in need of some assistance, but the protections afforded under this bill would go along way to protect the interests of the frail and elderly that deserve heightened protection. As it stands now, conservators can file for appointments in 123 different towns and are simply put an "unregulated industry." There is no central location to collect information regarding previous complaints or qualifications. Unfortunately, there are similar stories occurring throughout the state, and therefore a central registry to report abuses is direly needed. As seen, the powers given to conservators of the person are broad and should be carefully considered since they are entrusted to protect the most vulnerable in our society. When they abuse this power, there should be some mechanism to report transgressions, apart from or in addition to a partial judge that appointed the person. Most importantly, this bill preserves the preferences of the ward and requires clear and convincing evidence to disqualify such person from serving.

Currently, probate judges have broad discretion for the selection of conservators. These are often patronage appointments, which can also lead to conflicts of interest, since many judges are part-time and appoint those who practice before them and contribute to their elections. This bill will go a long way in revising the standards for appointing conservators by requiring the least restrictive forms of intervention to assist the respondent in caring and managing his or her own affairs. Moreover, this bill provides oversight and accountability of the probate courts by requiring recorded hearings and findings by clear and convincing evidence.

In closing, I thank the Committee's introduction of this bill. I would also suggest an intermediate process other than costly appeals to the superior court. Appeals to superior court are a deterrent for estates that have gone through the probate system. Instead, an appeal mechanism to an impartial three- judge panel would provide an efficient review process. I appreciate the opportunity to provide this testimony. If you have any questions feel free to contact me at (860) 286-0144 or (860) 371-5934.

Probate Can Be Sad End For Elderly

RICK GREEN

If you're old and unhealthy and the kids are fighting about what to do, pray you don't end up like poor Florence Kidwell.

With the stroke of Probate Judge Marianne Lassman Fisher's pen on April 7 last year, the Windsor Locks woman lost everything and descended into a hell known as probate court.

"The court finds that the respondent is incapable of managing her affairs, expressly including the exercising of all civil or personal rights," Fisher wrote in the order that turned the 79-year-old Kidwell into a gulag prisoner.

For those of you still living in a democracy, that means no voting, no checking account, no rights at all. Her crime: growing old and frail.

Kidwell opposed all this. The court and the lawyers appointed to represent her ignored Kidwell's wishes.

This started with a fight with her children about Kidwell's well-being. She was nearing 80 and in declining health. It was obvious she couldn't handle living by herself in the Windsor Locks house she'd been in for a half-century.Eccentric and independent, Kidwell lived in a house that was falling apart.

By the time the dispute landed in the East Windsor Probate Court in 2005, it wasn't long before a "temporary conservator" was appointed to handle her interests.

"Conservatorship" is legal language for taking away all of a person's rights.

There was no proper application filed with the court for this, according to lawyers from Greater Hartford Legal Aid, who intervened on Kidwell's behalf. The affidavit presented to demonstrate Kidwell's mental incompetence was "unreliable and incorrect," according to the Legal Aid lawyers.

"This was an 80-year-old who lived her life independently," said Veronica Halpine, a Legal Aid lawyer who worked on Kidwell's case. "There is supposed to be clear and convincing evidence before 'conserving' somebody. Kidwell is just a drop in the bucket. This is what happens."

Hard to believe? Halpine can point to a dozen other cases like Kidwell's. Old people, who can't live as independently as they once did, are stripped of their civil rights and moved to costly nursing homes and assisted-living facilities.

The truth is that Kidwell's family was deeply divided . Her daughter wanted one thing, her sons another. The probate court, which is supposed to help solve these problems, made it worse.

Somebody should have been listening to Florence Kidwell. Instead, she was placed in a locked unit at her nursing home. A court order to give her weekly spending money was ignored. The contents of her home were tossed without consulting her.

"She needed help," said Carol Bertino, Kidwell's daughter. "She didn't need to be told what to do. Everyone has the right to make their own decisions."

Actually, you don't if a conservator gets hold of you.

The legislature's judiciary committee will hold a hearing this afternoon at 1 p.m. to discuss probate court reform. Forcing probate judges to listen to the elderly is at the top of the list. Limiting the power of conservatorships is right below it.

Bertino and two lawyers from Legal Aid, Halpine and Marilyn Denny, spent a year fighting probate court, battling the $175 per hour fees that her conservator charged for tasks lik shopping for plastic flowers for Kidwell's room. Eventually, they succeeded.

On Feb 7, Kidwell's conservato terminated. Told of this, an ill Ki "had a smile from ear to ear," Be said.

Kidwell died March 2, a free w an.

Rick Green's column appe Tuesdays and Fridays. He ca reached at rgreen@courant.

005740

CONNECTI

WWW.COURANT.COM FRIDAY, OCTOBER 20, 2006

The Probate Court Outrage

RICK GREEN

It's not easy finding someone besides overworked legal aid lawyers and law school professors willing to take on our outdated probate court system, even during an election season.

Why, we've got probate judges running without opposition who raise tens of thousands of dollars from the same lawyers who practice in front of them.

No, if you aren't feeding on the probate court gravy train you probably don't care. Odds are, though, that you or someone you know will run into probate. These courts handle estates; they take away parental rights and grant adoptions.

They can take your freedom and dump you in a nursing home while your assets are controlled — and depleted. It took a Superior Court ruling to free 86-year-old Daniel Gross from this probate prison in Waterbury last July.

Jim Carey, a 37-year-old lawyer in Essex, offers hope that change might come from within. Carey is challenging 27-year incumbent Deborah Pearl in a local probate race.

A mainstream Democrat and no bomb-thrower, Carey is taking on an entrenched probate judge who represents everything we need to chuck about these vestiges of colonial Connecticut.

"I don't think most people know," Carey told me. "Unless they have to go into a probate court room they are

Probate court can be like a visit to the 19th century. We've got 123 of these little fiefdoms, each with a judge and staff. Uniform rules and procedures aren't followed. There's no official record. You don't have to be a lawyer to be elected as a judge. Folks who carefully plan their estates are hit with "fees" charged by courts who sole purpose is preserving their own independence.

"We are duplicating this 123 times around the state. This thing is broken," said Carey. "Consolidation certainly makes sense. It is an inefficient system."

Carey, a tax lawyer and former banker, says the probate courts tack on costly bureaucracy for estates and wills that are well-planned.

So let's start with a simple reform: Instead of a part-time court in nearly every little town we establish full-time, regional courts, with lawyers trained as judges. These courts would follow a uniform set of procedures. Judges wouldn't practice law on the side with colleagues who appear before them.

State legislators, infected by the machine politics of probate, wouldn't do this.

Pearl, not a lawyer, told me critics don't understand the good work courts do.

She said bigger regional courts aren't the answer, and neither are judges with a law school education. She said there are rules courts follow, even if it doesn't mean there's a record of proceedings.

"Efficiency is a really a code word for bigger is better. It's like multinational corporations. Big federal government. That's what it means," Pearl said.

"What do you get in three years of law school? They don't have a corner on the market of common sense," Pearl said. "We are one of the last community institutions."

Pearl sought endorsement of both political parties before Carey jumped in and beat her in the Democratic primary last summer. Pearl spent $30,000 of her own money, hiring Dean Pagani, a top aide to former Gov. John Rowland, as a consultant.

It's now Pearl the Republican vs. Carey the Democrat in a fight that pits new against old, reform vs. tradition.

"This isn't 300 years ago when we took buggies to the court house," said Carey, who is risking career suicide by taking on the legal establishment. "Its embarrassing."

No, it's an outrage.

Rick Green's column appears on Tuesdays and Fridays. He can be reached at rgreen@courant.com

005741

Probate Court: Offering Unequal Protection Under The Law

RICK GREEN

Welcome to the Hotel Connecticut. Come visit and you can never leave.

Because if you're elderly and frail and don't watch out, there's a probate court juage somewhere out there willing to lock you up in a nursing home. For your own good, of course, Grandma.

Unless something dramatic happens, another session of the General Assembly will slide by without probate reform. Oh, they'll hold hearings again, but don't bet on our elected leaders actually disrupting a system steeped in decades of old-boy politics and favoritism.

So this court system — where even the rules of evidence and recordkeeping are inconsistent and the legal experience of judges is uncertain — marches on, unimpeded.

The latest outrage-of-the-month comes from the Woodbridge probate district, where a judge last year denied a request by the children and husband of an elderly New Jersey woman, Maydelle Trambarulo, that she be allowed to leave a Connecticut nursing facility and return home.

Trambarulo was brought here for treatment in 2004 by a niece. Soon after, the niece went to probate court in Connecticut and had a conservator appointed to oversee her finances and health care, handing over the 76-year-old New Jersey woman's liberty — and control of her money — to probate.

"The husband is in New Jersey. The wife was brought here for rehabilitation by a relative. Then the relative had her conserved," said John Peters, a lawyer who won freedom for Daniel Gross, a Long Island man held against his will in a Waterbury nursing home.

Do I need to add that the Trambarulo estate is worth more than $1 million and that this fight, if nothing else, continues to provide thousands of dollars worth of work for lawyers?

It doesn't matter that this family could be a dysfunctional mess. It's not up to a Connecticut probate court to decide.

A former West Hartford probate judge who previously represented the Trambarulo family, John Berman, understood this when he said in court papers in December 2005 that the "court lacks jurisdiction to appoint a conservator."

Clifford D. Hoyle, the acting judge in Woodbridge, ruled, instead, that he was "not convinced that the respondent's family is willing to make the time commitments necessary to care for her."

Peters, now representing the Trambarulo family, told me that Maydelle "doesn't live here. The judge doesn't have jurisdiction. The fact that you are here doesn't mean you are a resident. She wants to go home."

Royal Stark, director of the health law clinic at the Quinnipiac University School of Law, said the legislature must limit the power that probate courts hand to conservators.

"Until I got a glimpse of it, I didn't realize what was at stake and how bad things could go," Stark said. For example, Stark said that once a person has been "conserved" by probate it is nearly impossible to remove conservator.

Reform-minded lawyers want l changes, such as mandating that respect previous requests made b elderly, known as "advance direc Courts should also follow the rule evidence and proceedings should conducted on the record. They als to make it easier to appeal decisio

"We are going to wade into it ar if there are solutions for it," prom state Sen. Andrew McDonald, the chairman of the judiciary commit "A lot of this operates in the shad

There you have it — a court sys that operates in the dark. Time to the lights on.

Rick Green's column appears o Tuesdays and Fridays. He can be reached at rgreen@courant.com.

005742

TESTIMONY OF:

Patricia L. Damon, Judge of Probate
District of Deep River

for

The Judiciary Committee
of the Connecticut General Assembly

Public Hearing

March 30, 2007

Senator McDonald, Representative Lawlor, Honorable Members of the Judiciary Committee

As the Judge of Probate for the District of Deep River and a member of the Board of Directors of the Connecticut Probate Judges Association for Local Courts, I am writing concerning the following bills that are the subject of a public hearing before the Judiciary Committee on Friday, March 30, 2007, at 1:00 p.m. – SB-1439, SB-1454, HB-7382, SB-1453, and SB-1272.

Deep River's chief elected officials, residents, and I **fully support** the continued position of the 110 members of the Connecticut Council of Small Towns. Again this year, the members of COST voted on their Legislative Platform to **PROMOTE HEALTHY COMMUNITIES AND STRONG GRASSROOTS GOVERNMENT**. This includes the following:

> **Preserve and Strengthen the Municipal Probate Judge System -**
> COST supports strengthening and preserving local probate courts in smaller communities. COST *opposes the mandatory consolidation of local probate courts (directly or indirectly) and opposes any financing scheme for local courts that would be unfair to small towns*. COST supports the development of a fair and equitable fee structure to help relieve the financial pressures that some probate courts may be experiencing.

We **fully support** Judges Secola, Pearl, Kimes, Case, and Purnell in their testimony on these and other bills.

SB-1439 – AAC CONSERVATORS AND PROBATE APPEALS

We **support** this bill with the following exceptions:

Sec. 2. Section 45a-649 – Inclusion of 17a-543 and 17a-543a involves procedures governing medication, treatment, psychosurgery and shock therapy and administration of medication to criminal defendants, respectively. We **oppose** this change, especially when immediate treatment is needed. Doubling the notice time allows mentally disabled individuals to remain vulnerable and a danger to themselves and others.

Sec. 4. Section 45a-650 (b) – Deleting the Courts' ability to waive medical evidence, especially in an emergency situation, allows mentally disabled individuals to remain vulnerable and a danger to themselves and others. We **oppose** this change. It is not in the best interest of the individuals we are sworn to protect.

Sec. 4. Section 45a-650 [(f)] (i) – This proposed changed adds the wording "ANY INTERESTED PARTY", and we believe that this is a violation of the right to privacy of the respondent who should be the only one who can request this clarificiation. We **oppose** this change.

SB-1454 – AAC THE REQUIREMENTS FOR FILING AN AFFIDAVIT IN LIEU OF ADMINISTRATION IN THE PROBATE OF A SMALL ESTATE

We **support** this bill as it is in the best interests of the residents of the State of Connecticut.

HB – 7382 – AAC HEALTH INSURANCE COVERAGE FOR PROBATE COURT JUDGES AND EMPLOYEES

The Probate system's financial stability has been adversely affected by several factors. Indigency costs have quadrupled in the past five years ($1.0 Million in 01-02 to over $4.0 million in 05-06). In the same

JUDICIARY COMMITTEE

March 30, 2007

Testimony of Attorney Robert E. Byron in Support of Raised Bill 1439 and 1453.

Dear Senator McDonald and Representative Lawlor:

The referenced bills are up for public hearing today at 1:00. I respectfully ask that you support them. I am an attorney who represents alleged incapables in the probate courts. While most of my experiences in the probate system have been good, and I have found the probate judges to be honorable, capable and well-intentioned, I have also found the system itself to heavily weighted against the subjects of applicatons for involuntary conservatorship. Justice, equity and the true interests of the alleged incapable are now far too dependent on the good will and discretion of the probate court. These bills will serve to codify the protections which are now unfortunately not a component part of the system.

I have had the unhappy experience of representing people for whom applications were filed for reasons other than my clients' actual mental capacity. In one case DSS filed to resolve a conflict between my client and her son, and obtained a report from a psychiatrist who did not personally meet with my client, but who nonetheless stated she was incapable, in the face of the care facility's reports, the testimony of her family, and the evidence of her manifest capacity to the contrary. DSS can always find a psychiatrist to do that; actually, anyone can. In another case, DSS sought to be named conservator over my client so as to deter him from pestering them for, if you can believe it, haircuts. Admittedly, he did this once a week, but still. The only way I could fend them off was to agree to have my client's son named conservator.

But family members themselves can be dangerous. I represented an 78-year old who had given her son power of attorney over her estate, with the understanding that she would live out her life in the home where she had lived for 35 years. But the son had other ideas and following a family fight got my client to the psychiatric facilty at Yale, where she was put on antipsychotic medication, which impaired her cognitive faculties further, and which led to her being moved to a nursing home where she has been kept on a daily regimen of neuroleptic pharmaceuticals, to address her claimed anxiety. The son was named conservator and has, every year since, had funds transferred from his mother's estate to his children by way of court-approved gifts.

It is a very easy thing for someone to file an application, find a willing psychiatrist to issue a report, and get someone or themselves named conservator. It is a very hard thing to appeal that. It requires a full-blown civil action, with all the fees and delays that go along with that. Moreover, while the state will pay for representation at the probate hearing, it will not pay for an appeal.

These bills don't fix everyting, but they advance the law and they will help people keep their independence when they are capable of doing so. As well, they will labor against the institutional bias in the system against people over 65, particularly the pernicious notion that dementia is a fate that awaits us. That is a false notion without scientic support, but it

permeates the system, especially in social services, where the refrain "dementia never gets better, it only gets worse" is a mantra. The mere inclusion of the word word "dementia" in a report changes everything. The burden of proof, I find, shifts from proving incapacity before the age of 65 to proving capacity after. There is a presumption of dementia for people over 65 which is very, very hard to overcome, and almost impossible to do so under the system we have now.

The system needs changes and these bills provide some of the changes it needs. I ask that you grant them your support.

Respectfully,

Robert E. Byron, Esq.
53 Oak Street
Hartford, CT

CONNECTICUT LEGAL RIGHTS PROJECT, INC.
P.O. Box 351, Silver Street • Middletown, CT 06457
(860) 262-5030 • Fax: (860) 262-5035

JUDICIARY COMMITTEE

Testimony of Thomas Behrendt Regarding Raised Senate Bill No. 1439:

AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS

March 30, 2007

Senator McDonald, Representative Lawlor, and members of the Committee:

I am the Legal Director of the Connecticut Legal Rights Project, and am here to address Raised Senate Bill No. 1439, An Act Concerning Conservators and Probate Appeals. I am testifying in support of the proposed substitute language submitted by Judge Killian (rather than the language of the bill as printed). A copy of the bill is attached to my written testimony.

I am testifying as a member of the "Conservatorship Revision Committee" convened by Judge Lavery and chaired by Judge Killian and Judge Lawlor. This multidisciplinary committee worked on this bill intensively over the past four months. It is acknowledged by the bench and bar by most of you, as well as the public – the users of our courts – that the current statutes are in need of revision. The proposal before you will bring our statutory scheme up to date and remedy the problems in current law. It adds needed safeguards to minimize the intrusion upon fundamental liberty and autonomy while it assures that vulnerable individuals are protected and well served.

The nucleus of this legislation – and the starting point for the Committee's work – was a draft from the Connecticut Bar Association's "Uniform Guardianship and Protective Procedures Act (UGPPA) Study Group." That work group met in recognition of the need to revise our statutes and as an outgrowth of discussions about last year's conservatorship bill (HB5840, which was not enacted).

The bill is the product of the efforts of many dedicated individuals working long and hard. We consulted with experts on guardianship, including the Director and Assistant Director of the ABA Commission on Law and Aging, and members of the National Conference of Commissioners on Uniform State Laws. In drafting this bill, we have had the able assistance of David Bilken, the former Director of the Law Revision Commission.

An overarching principle of the legislation is **"least restrictive means of intervention"** — that conservatorship be imposed only if there are no less restrictive means available, and that in appointing a conservator, the court limits the conservator to those duties and authorities that are necessary. This is an important change for Connecticut. Present statutes, which some characterize as archaic, are out of step with our current understanding of recovery, with the ADA, and the Supreme Court's decision in *Olmstead v. L.C.* The proposal before you respects existing law and custom, and practice, but makes necessary – and overdue – changes to update and improve the statutory framework governing conservatorship. This bill is largely based on

accepted national model laws, including the "Uniform Guardianship & Protective Procedures Act" (1997) and the Model Probate Code (most recently amended in 2006). One by one, states have been revising their statutes to adopt many of the provisions and principles found in these model laws. (The groups that drafted and support them include the National College of Probate Judges, the ABA Commission on Law & Aging, the National Guardianship Association., the National Association of Elder Law Attorneys, and the National Conference of Commissioners on Uniform State Laws.)

The proposed legislation would enhance procedural safeguards in the legal proceedings ("due process of law"). It remedies problems in our current law. For example:

- A recording of the proceedings would be required.
- Provisions for notice and the right to counsel would be clarified.
- The legislation would mandate that testimony be given under penalty of false statement.
- It clarifies the right to a prompt hearing whenever an emergency temporary conservator is appointed ex parte as well as in situations where there is a plan to relocate a conserved individual to a nursing home or long term care institution.
- It also adds standards lacking in current law concerning the procedure for the termination of conservatorships.
- In addition, the legislation would streamline the currently daunting appellate process. Appeals would be conducted as "on the record" reviews, with an expeditious process similar to those used for administrative appeals. The bill would also clarify the right to habeas reviews and allow for timely review by a three judge Probate panel.

An additional benefit of this legislation is that it would provide much needed guidance and uniformity to probate judges and the attorneys who practice in their courts. At present, each court and each judge handles the various aspects of conservatorship matters differently. It feels as if there are 117 separate and distinct sets of rules of practice and procedure in Connecticut's probate courts. Despite the fact that there are many excellent courts and judges, uniform standards and fundamental procedural safeguards are lacking in our probate system.

The current statutes need to be revised, and the legislation before you is an excellent proposal to accomplish this. It is the product of thoughtful, thorough, and intensive review. I hope that we have your support.

Thank you for your attention to this matter and for the opportunity to testify.

Thomas Behrendt, Legal Director
Connecticut Legal Rights Project
P.O. Box 351, Silver Street
860-262-5034

Conservator Statutes Revision Committee
Connecticut

March 23, 2007
Draft bill no. 8

Section 1. Section 45a-132a of the general statutes **(Examination of incapable party. Expense.)** is repealed and the following is substituted in lieu thereof:

In any matter before a court of probate in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state. A conserved individual or the respondent to an application for involuntary representation made under section 45a-648, as amended, and temporary representation under section 45a-654, as amended, may refuse to undergo an examination ordered by the court under this section. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such examination or the estate of the alleged incapable in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

Sec. 2. Section 45a-186 of the general statutes **(Appeals from probate.)** is repealed and the following is substituted in lieu thereof:

(a) Any person aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, may, not later than forty-five days after mailing of such order, denial or decree for matters heard under sections. 45a-593, 45a-594, 45a-595, 45a-597, 45a-644 to 45a-677, inclusive, and 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of such order, denial or decree for all other matters in the Court of Probate, appeal therefrom to the Superior Court [in accordance with subsection (b) of this section. Except in the case of an appeal by the state, such person shall give security for costs in the amount of one hundred fifty dollars, which may be paid to the clerk, or a recognizance with surety annexed to the appeal and taken before the clerk or a commissioner of the Superior Court or a bond substantially in accordance with the bond provided for appeals to the Supreme Court.] Such an appeal shall be commenced by filing a complaint in the Superior Court in the judicial district in which such Probate Court is located, except that (1) an appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of subsection 12-395 shall be filed in the judicial district of Hartford and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the Superior Court for juvenile matters having jurisdiction over matters arising in such probate district. The complaint shall state the reasons for appeal. A copy of the order, denial or decree appealed from shall be attached thereto. Appeals from any decision

rendered in any case after a [record] recording is made of the proceedings under sections 17a-498, 17a-685, 45a-650, 51-72 and 51-73 shall be on the record and shall not be a trial de novo.

(b) [Any such appeal shall be filed in the superior court for the judicial district in which such court of probate is located except that (1) any appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of section 12-395, shall be filed in the judicial district of Hartford and (2) any appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters arising in such probate district.] A person appealing pursuant to this section shall serve a copy of the complaint on the Probate Court that rendered the order, denial or decree appealed from and on all interested parties. Failure to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50 of the general statutes, service of the copy of the complaint shall be by state marshal, constable, or an indifferent person. Service shall be in hand or by leaving a copy at the Probate Court that rendered the order being appealed, or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with said probate court, except that service on a respondent or conserved individual in an appeal from an action under chapter 802h, part IV of the general statutes shall be in hand by a state marshal, constable or an indifferent person.

(c) Not later than fifteen days after filing an appeal under this section, the person appealing shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service and (2) a statement of the date and manner in which a copy of the complaint was served on the Probate Court and each interested party.

(d) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.

(e) A hearing in an appeal from probate proceedings under sections 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703 and 45a-717 shall commence, unless a stay has been issued pursuant to subsection (f) of this section, not later than ninety days after the appeal has been filed.

(f) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Probate Court or the Superior Court. Filing of the motion with the Probate Court shall not preclude action by the Superior Court.

(g) Nothing in this section shall prevent use by an individual aggrieved under subsection (a) of this section of a petition for a writ of habeas corpus, a petition for termination of an involuntary conservatorship or other available remedy.

Sec. 3. (NEW) (Section 45a-186a. Record. Hearing.) (a) In an appeal from an order, denial or decree of the Probate Court made after a hearing that is on the record, the Probate Court, not later than thirty days after service of the appeal under section 45a-186, as amended by this act, or within such further time as may be allowed by the Superior Court, shall transcribe any portion of the recording of the proceedings that has not been transcribed. The Probate Court shall transmit to the Superior Court the original or a certified copy of the entire record of the proceeding from which the appeal was taken. The record shall include, but not be limited to, the findings of fact and conclusions of law, separately stated, of the Probate Court.

(b) An appeal from an order, denial or decree made after a hearing on the record shall be conducted by the Superior Court, including a state referee appointed under section 51-50*l* of the general statutes, without a jury. Such an appeal shall be confined to the record. If alleged irregularities in procedure before the Probate Court are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the Superior Court. The court, on request, shall hear oral argument and receive written briefs.

Sec. 4. (NEW) (Section 45a-186b. Action of Superior Court on appeal) In an appeal taken under section 45a-186, as amended, from a matter heard on the record in the Probate Court, the Superior Court shall not substitute its judgment for that of the Probate Court as to the weight of the evidence on questions of fact. The Superior Court shall affirm the decision of the Probate Court unless the court finds that substantial rights of the person appealing have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) in violation of the federal or state constitutions or statutes of this state, (2) in excess of the statutory authority of the probate court, (3) made on unlawful procedure, (4) affected by other error of law, (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Superior Court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment that modifies the Probate Court order, denial or decree or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

Sec. 5. (NEW) (Section 45a-186c. Costs. Waiver.) (a) In an appeal taken under 45a-186, as amended by this act, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that such costs are allowed in judgments rendered by the Superior Court.

(b) If the appellant claims that such appellant cannot pay the costs of an appeal taken under section 45a-186, as amended, the appellant shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such costs, including the requirement of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render judgment on the application for waiver, which judgment shall contain a

statement of the facts found by the court and the court's conclusions based on the facts found. The filing of the application for the waiver shall toll the time limit for the filing of an appeal until such time as a judgment on such application is rendered. A fiduciary acting on an order of the court made after expiration of the period of appeal shall not be liable for actions made in good faith unless such fiduciary has actual notice of the tolling of the appeal period.

Sec. 6. Section 45a-199 of the general statutes **("Fiduciary" defined.)** is repealed the following is substituted in lieu thereof:

As used in sections 45a-143, 45a-152, 45a-202 to 45a-208, inclusive, [and] 45a-242 to 45a-244, inclusive, and section 5 of this act, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

Sec. 7. Section 45a-487c of the general statutes **(Representation by court-appointed conservator or guardian, agent, trustee, executor or administrator, or parent.)** is repealed and the following is substituted in lieu thereof:

In connection with trust matters, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: (1) A court-appointed conservator or guardian of the estate may represent and bind the estate that the conservator or guardian controls; (2) a court-appointed conservator or guardian of the person may represent and bind the ward or conserved individual if a conservator or guardian of the ward's or conserved individual's estate has not been appointed; (3) an agent having authority to do so may represent and bind the principal; (4) a trustee may represent and bind the beneficiaries of the trust; (5) an executor or administrator of a decedent's estate may represent and bind persons interested in the estate; and (6) if a conservator or guardian has not been appointed, a parent may represent and bind the parent's minor or unborn child.

Sec. 8. Subsection (b) of section 45a-593 of the general statutes **(Administrator of Veterans' Affairs to be party in interest.)** is repealed and the following is substituted in lieu thereof:

(b) The Administrator of Veterans' Affairs or [his] such administrator's successor shall be an interested party in the administration of the estate of any ward or conserved individual on whose account the benefits are payable or whose estate includes assets derived from benefits paid by the Veterans' Administration, its predecessor or successor.

Sec. 9. Section 45a-595 of the general statutes **(Investment of funds in insurance and annuity contracts by conservator or guardian of estate.)** is repealed and the following is substituted in lieu thereof:

Upon application of a conservator or the guardian of the estate of a ward or conserved individual, the [court of probate] Court of Probate may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company authorized to conduct business in this state, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested in it.

Sec. 10. Section 45a-644 of the general statutes **(Definitions.)** is repealed and the following is substituted in lieu thereof:

For the purposes of sections 45a-644 to [45a-662] 45a-663, inclusive, the following terms shall have the following meanings:

(a) "Conservator of the estate" means a person, a municipal or state official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of section 45a-654, as amended.

(b) "Conservator of the person" means a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by the Probate Court under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of section 45a-654, as amended.

(c) "Incapable of caring for one's self" or "incapable of caring for himself or herself" means that an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health] that results in such individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to meet essential requirements for personal needs.

(d) "Incapable of managing [his or her] the individual's affairs" means that [a person] an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from performing] that results in such

individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to perform the functions inherent in managing [his or her] the individual's affairs, and the [person] individual has property [which] that will be wasted or dissipated unless [proper] adequate property management is provided, or that funds are needed for the support, care or welfare of the [person] the individual or those entitled to be supported by [that person] the individual and that the [person] individual is unable to take the necessary steps to obtain or provide funds [which are] needed for the support, care or welfare of the [person] the individual or those entitled to be supported by such [person] individual.

(e) "Involuntary representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the Court of Probate that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

(f) "Respondent" means an adult person for whom an application for involuntary representation has been filed or an adult person who has requested voluntary representation.

(g) "Voluntary representation" means the appointment of a conservator of the person or estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing [his or her] the individual's affairs or incapable of caring for himself or herself.

(h) ["Ward"] "Conserved individual" means [a person] an individual for whom involuntary representation [is granted] or voluntary representation is appointed under sections 45a-644 to [45a-662] 45a-663, inclusive.

(i) "Personal needs" means needs for an individual such as, but not limited to, food, clothing, shelter, health care and safety.

(j) "Property management" means actions to obtain, administer, manage, protect and dispose of real and personal property, intangible property, business property, benefits and income and to deal with financial affairs.

(k) "Least restrictive means of intervention" means intervention for a conserved individual sufficient to provide, within the resources available to the conserved individual, either from the conserved individual's own estate or from private or public assistance, for a conserved individual's personal needs or property management while affording the conserved individual the greatest amount of independence and self determination.

Sec. 11. (NEW) (Section 45a-644a. Recording of probate proceedings.) A Court of Probate shall cause a recording to be made of all proceedings held under sections 45a-644 to 45a-663, inclusive. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator.

Sec. 12. Section 45a-645 of the general statutes **(Naming of own conservator for future incapacity.)** is repealed and the following is substituted in lieu thereof:

(a) Any [person] individual who has attained at least eighteen years of age, and who is of sound mind, may designate in writing a person or persons whom [he] such individual desires to be appointed as conservator of his person or estate or both, if [he] such individual is thereafter found to be incapable of managing his affairs or incapable of caring for one's self.

(b) The designation shall be executed, witnessed and revoked in the same manner as provided for wills in sections 45a-251 and 45a-257; provided, any person who is so designated as a conservator shall not qualify as a witness.

(c) Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of section 45a-650, if appointed thereafter as a conservator.

Sec. 13. Section 45a-648 of the general statutes **(Application for involuntary representation. Penalty for fraudulent or malicious application or false testimony.)** is repealed and the following is substituted in lieu thereof:

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing [his or her] the respondent's affairs or incapable of caring for [himself or herself] the respondent and stating the reasons for the alleged incapability. The application shall be filed in the [court of probate] Court of Probate in the district in which the respondent resides, [or has his domicile] is domiciled or is located at the time of the filing of the application.

(b) An application for appointment of a conservator for a non-domiciliary of the state made pursuant to subsection (a) of this section, shall not be granted unless the court finds (1) the respondent is presently located in the probate district in which the application is filed; (2) the petitioner has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the respondent has been provided with an opportunity to return to the respondent's place of domicile, including providing the financial means as available to the conserved individual to return to such individual's place of domicile and has declined to return or the petitioner has made reasonable but unsuccessful efforts to return the respondent or conserved individual to such respondent's or such individual's place of domicile; and (4) the requirements of this chapter for the appointment of an involuntary conservator are met.

(c) If, subsequent to the appointment of a conservator for a non-domiciliary of the state, the non-domiciliary becomes domiciled in this state, the provisions of this section no longer apply.

(d) Appointment of a conservator for a non-domiciliary made under subsection (b) of this section shall be reviewed by the court every sixty days. The appointment of such a conservator shall expire sixty days after the date of such appointment or the most recent review ordered by the court, whichever is later, unless the court finds (1) the conserved individual is presently located in the state; (2) the conservator has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the conserved individual has

been provided with an opportunity to return to such individual's place of domicile and has declined to return or the conservator has made reasonable, but unsuccessful efforts, to return the conserved individual to such individual's place of domicile including providing the financial means as available to the conserved individual to return to such individual's place of domicile; and (4) all other requirements of this chapter for the appointment of an involuntary conservator are met. As part of its review, the court shall receive and consider reports from the conservator and from the attorney for the conserved individual regarding the requirements of this subsection.

(e) [Any person who] A person is guilty of fraudulent or malicious application or false testimony when such person willfully [wilfully] files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator or any person who conspires with another person to file or cause to be filed such an application or any person who [wilfully] willfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to [45a-662] 45a-663, inclusive.[, shall be fined not more than one thousand dollars or imprisoned not more than one year or both.] Fraudulent or malicious application or false testimony is a class D felony.

Sec. 14. Section 45a-649 of the general statutes **(Notice of hearing. [Appointment of attorney.])** is repealed and following is substituted in lieu thereof:

(a) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least [seven] ten days before the hearing date, or in the case of applications made pursuant to sections 17a-543 and 17a-543a at least seven days before the hearing, which date shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. Notice of the hearing shall be sent within thirty days after receipt of the application. (1) The court shall direct that personal service be made, by a state marshal, constable or an indifferent person, upon the following: [(A)] The respondent, [except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this section; (B)] the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin of such respondent. (2) The court shall order such notice as it [directs] considers appropriate, including to the following: (A) The applicant; (B) the person in charge of welfare in the town where the respondent is domiciled or resident and if there is no such person, the first selectman or chief executive officer of the town if the respondent is receiving assistance from the town; (C) the Commissioner of Social Services, if the respondent is in a state-operated institution or receiving aid, care or assistance from the state; (D) the Commissioner of Veterans' Affairs if the respondent is receiving veterans'

benefits or the Veterans' Home, or both, if the respondent is receiving aid or care from such home, or both; (E) the Commissioner of Administrative Services, if the respondent is receiving aid or care from the state; (F) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives; (G) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution. (3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified. (4) Failure to give notice to the respondent under the provisions of subdivision (1) of this subsection and of subsection (b) of this section shall deprive the court of jurisdiction to consider such application.

(b) [(1)] The notice required by subdivision (1) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, [and] (C) the time and place of the hearing and (D) that the respondent has a right to be present at the hearing and has a right to be represented by an attorney of the respondent's choice at [his or her own] the respondent's expense. The notice shall include a statement in at least twelve-point type that substantially conforms to the following:

"Possible consequences of the appointment of a conservator

This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted, you will lose some of your rights.

A permanent conservator can be appointed only after a court hearing. You have a right to attend the hearing. If you are not able to get to the court, the hearing can be moved to a convenient location, even to where you are residing.

You should get an attorney to represent you at the hearing. If you are unable to obtain an attorney to represent you, the court will appoint an attorney for you. If you are unable to afford the attorney, the court will pay attorney fees as allowed by court regulation. Even if you qualify for payment of an attorney, you may choose your own attorney if she or he will accept the fee rate approved by the state of Connecticut.

If, after a hearing, the court decides that you lack the ability to care for yourself or pay your own bills, the court may review any alternative plans you have to get assistance to handle your own affairs. If the court decides that there are no adequate alternatives, the court may appoint a conservator and assign the conservator some or all of the duties listed below. While the purpose of a conservator is to help you, you should be aware that appointment of a conservator limits your rights. Among the areas that may be affected are:

- Accessing your money
- Deciding where you live
- Making medical decisions
- Paying your bills
- Planning a budget
- Managing your property

You also have a right to participate in the selection of your conservator. If you have already designated a conservator or if you inform the court of your choice for a conservator, the court must honor your request. The court may refuse your request only if the court decides that the person designated by you is not appropriate.

The conservator appointed for you could be a lawyer, a public official or someone whom you did not know before the appointment. The conservator will be required to make regular reports to the court about you. The conservator may charge you a fee, supervised by the court, for being your conservator."

(c) The notice required by subdivision (2) of subsection (a) of this section shall state only that appointment of a conservator is being sought, the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

(d) If the respondent is unable to request or obtain [counsel] an attorney for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(e) If the respondent notifies the court in any manner that [he or she] the respondent wants to attend the hearing on the application but is unable to do so [because of physical incapacity], the court shall schedule the hearing on the application at a place [which] that would facilitate attendance by the respondent [but if not practical, then the judge shall visit the respondent, if he or she is in the state of Connecticut, before the hearing. Notice to all other persons required by this section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing].

Sec. 15. (NEW) (Section 45a-649a. Right to attorney.) (a) An individual subject to an application for involuntary representation or subject to proceedings subsequent to an appointment of an involuntary conservator shall have the right to be represented by an attorney of the individual's choice at the expense of the individual or, if the individual is indigent, within the payment guidelines of the Probate Court.

(b) If the court finds the respondent or conserved individual indigent or otherwise unable to pay for an attorney, the court shall appoint an attorney for the respondent or conserved individual unless the respondent refuses to be represented by an attorney and the court finds that the respondent or conserved individual understands the nature of the refusal. The court shall appoint an attorney from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations promulgated by the administrator under section 45a-77 of the general statutes.

(c) An attorney appointed pursuant to this section shall represent the respondent or conserved individual in proceedings under sections 45a-644 to section 45a-663, inclusive, of the general statutes, and shall consult with the conserved individual regarding bringing an appeal to the Superior Court under title 45a of the general statutes. If requested to do so by the conserved individual, the attorney shall assist in the filing and commencing of an appeal to the superior court. Assistance in filing an appeal shall not obligate the attorney to appear in or prosecute the appeal. A conservator may not deny the conserved individual access to the individual's resources needed for an appeal.

(d) Nothing shall impair, limit or diminish the right of a conserved individual or respondent to replace the attorney for such individual with another attorney whom such individual selects in accordance with the provisions of this section. Fees of an attorney chosen by the conserved individual shall be approved by the Probate Court or, if an appeal is taken, by the Superior Court.

(e) If the respondent or conserved individual is indigent, an attorney appointed under this section shall be paid a reasonable compensation. Rates of compensation for such appointed attorneys shall be established by the Office of the Probate Court Administrator. Such compensation shall be paid from funds appropriated to the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be paid from the Probate Court Administration Fund.

(f) An attorney representing an individual subject to proceedings under chapter 802h shall not accept appointment as guardian ad litem or conservator of the person or estate for the same individual, unless such attorney has been nominated by the respondent or conserved individual pursuant to section 45a-645, as amended, or similar instrument, including, but not limited to, a trust or an advance directive pursuant to section 19a-580e or 19a-580g, or is nominated by the respondent or conserved individual pursuant to section 45a-650, as amended.

(g) An attorney for the respondent or conserved individual, on presentation of proof of authority, shall have access to all information pertinent to proceedings under title 45a of the general statutes, including immediate access to medical records available to the respondent's treating physician.

Sec. 16. Section. 45a-650 of the general statutes (Hearing. [Medical information.] Evidence. Appointment of conservator. Limitation re powers and duties.) is repealed and the following is substituted in lieu thereof:

(a) At any hearing for involuntary representation, the court shall require clear and convincing evidence that (1) it has jurisdiction, (2) the respondent has been given notice as required by section 45a-648, as amended by this act, and (3) before receiving evidence regarding the condition of the respondent, the respondent is represented by an attorney or the respondent has waived the right to be represented by an attorney.

(b) The rules of evidence promulgated for the Superior Court shall apply to proceedings pursuant to chapter 802h, part IV of the general statutes. Testimony at a hearing held pursuant to this section shall be given under oath or affirmation. The respondent has the right to attend any hearing held under this section.

(c) After making the findings required by subsection (a) of this section, the court shall receive evidence regarding the respondent's condition, the capacity of the respondent to care for one's self or manage the respondent's affairs, and the ability of the respondent to meet his or her needs without appointment of a conservator.[, including a written report or testimony by] Unless waived by the court pursuant to this subsection, evidence shall be introduced from one or more physicians licensed to practice medicine in the state who have examined the respondent within [thirty] forty-five days preceding the hearing. The [report or testimony] evidence shall contain specific information regarding the [disability and the extent of its incapacitating effect] respondent's condition, and the effect of the condition on the respondent's ability to care for one's self or to manage the respondent's affairs. The court may also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, reports from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court [deems] considers qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or [his or her] the respondent's refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the court shall make a specific finding in any decree issued on the [petition] application stating why medical evidence was not required. [In any matter in which the Commissioner of Social Services seeks the appointment of a conservator pursuant to chapter 319dd and represents to the court that an examination by an independent physician, psychologist or psychiatrist is necessary to determine whether the elderly person is capable of managing his or her personal or

financial affairs, the court shall order such examination unless the court determines that such examination is not in the best interests of the elderly person. The court shall order such examination notwithstanding any medical report submitted to the court by the elderly person or the caretaker of such elderly person.] Any [medical report] hospital, psychiatric and medical record or report filed with the court pursuant to this subsection shall be confidential.

[(b)] (d) Upon the filing of an application for involuntary representation pursuant to section 45a-648, as amended, the court [may] shall issue an order for the disclosure of the medical information required pursuant to [subsection (a) of] this section, to the respondent's attorney and, upon request, to the respondent. The court may issue an order for the disclosure of such medical information to other individuals as the court determines necessary.

[(c)] (e) Notwithstanding the provisions of section 45a-7, the court may hold the hearing on the application at a place [within the state] other than its usual courtroom if it would facilitate attendance by the respondent.

[(d)] (f) If the court finds by clear and convincing evidence that the respondent is incapable of managing [his or her] the respondent's affairs and that the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in managing the respondent's affairs, the court [shall] may appoint a conservator of [his or her] the respondent's estate unless it appears to the court that such affairs are being managed [properly] adequately or can be managed adequately without the appointment of a conservator. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself and that appointment of a conservator is the least restrictive means of intervention available to assist the respondent in caring for himself or herself, the court [shall] may appoint a conservator of his or her person unless it appears to the court that the respondent is being cared for [properly] adequately or can be cared for adequately without the appointment of a conservator.

(g) The court shall assign to a conservator appointed under this section only those duties and authorities that are the least restrictive means of intervention necessary for the conserved individual. The court shall find by clear and convincing evidence that such duties and authorities shall restrict the decision-making authority of the conserved individual only to the extent necessary to provide for such personal needs or property management. Such needs and management shall be provided in a manner appropriate to the individual. The court shall make a finding of the clear and convincing evidence that supports the need for each duty and authority assigned to the conservator.

(h) Absent a court order to the contrary and except as otherwise provided in subsection (b) of section 19a-580e, a conservator appointed pursuant to this section shall be bound by all health care decisions properly made by the conserved individual's health care representative.

(i) A conserved individual retains all rights and authority not otherwise assigned to a conservator.

[(e)] (j) When determining whether a conservator should be appointed [and in selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. In making such determination, the court shall consider whether the respondent had previously made alternative arrangements for the care of his or her person or for the management of his or her affairs, including, but not limited to, the execution of a valid durable power of attorney, the appointment of a health-care agent or other similar document.] for the respondent, the court shall consider the following: (1) the abilities of the respondent, (2) the capacity of the respondent to understand and articulate an informed preference, (3) relevant and material information obtained from the respondent, (4) evidence of the respondent's past preferences and life style choices, (5) the respondent's cultural background, (6) the desirability of maintaining continuity in the respondent's life and environment, (7) whether the respondent has made adequate alternative arrangements for the care of his or her person or for the management of the individual's affairs, including, but not limited to, execution of a durable power of attorney, springing durable power of attorney, living will, trust or similar instrument or appointment of a health-care representative or health care agent, (8) any relevant and material evidence from the respondent's family or from a person regarding the respondent's past practices and preferences and (9) supportive services, technology or other means that are available to assist in meeting the respondent's needs. No conservator may be appointed if the respondent's personal needs and property management are being met adequately by an agency or individual appointed pursuant to section 1-43, 19a-575a, 19a-577, 19a-580e or 19a-580g of the general statutes.

(k) The respondent or conserved individual may[, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference,] appoint, designate or nominate a conservator pursuant to sections 19a-580e, 19a-580g or 45a-645 of the general statutes or may, orally or in writing, nominate a conservator who shall be appointed unless the court finds [the appointment of] that the appointee, designee or nominee is [not in the best interests of the respondent. In such case, or in the absence of any such nomination, the court] unwilling or unable to serve or there is substantial evidence to disqualify such person. If there is no such appointment, designation or nomination or if the court does not appoint the person appointed, designated or nominated by the respondent or conserved individual, the court may appoint any qualified person, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644. In considering whom to appoint as conservator under this subsection, the court shall consider (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved individual's preferences, (2) the ability of the proposed conservator to carry out the duties and authorities of the office, (3) the cost to the estate of the respondent or conserved individual, (4) the commitment of the proposed conservator to promoting the respondent's or conserved individual's welfare and independence, and (5) any existing or potential conflicts of interest.

[(f) Upon the request of the respondent or his or her counsel, made within thirty days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

(g)] (l) If the court appoints a conservator of the estate of the respondent, it shall require a probate bond. The court may, if it [deems] considers it necessary for the protection of the respondent, require a bond of any conservator of the person appointed under this section.

(m) Nothing in this chapter shall impair, limit or diminish a conserved individual's right to retain an attorney to represent such individual or to seek redress of grievances in any court or administrative agency, including proceedings in the nature of habeas corpus arising out of any limitations imposed on the conserved individual by court action taken under this chapter, chapter 319i, chapter 319j or section 45a-242 of the general statutes. In any other proceeding in which the conservator has retained counsel for the conserved individual, the conserved individual may ask the Probate Court to direct the conservator to substitute an attorney chosen by the conserved individual.

[(h) The court may limit the powers and duties of either the conservator of the person or the conservator of the estate, to include some, but not all, of the powers and duties set forth in subsections (a) and (b) of section 45a-644 and sections 45a-655 and 45a-656, and shall make specific findings to justify such a limitation, in the best interests of the ward. In determining whether or not any such limitations should be imposed, the court shall consider the abilities of the ward, the prior appointment of any attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the ward, any support services which are otherwise available to the ward, and any other relevant evidence. The court may modify its decree upon any change in circumstances.]

Sec. 17. Section 45a-653 of the general statutes **(Contracts and funds of alleged incapable person pending application for appointment of conservator. Notice of application.)** is repealed and following is substituted in lieu thereof:

(a) If an application for the appointment of a conservator has been made, and if, while the application is pending, the applicant records a notice of the application certified by the court with the town clerk of any town within which real property of the alleged incapable person is situated and with the town clerk of the town in which the alleged incapable person resides, any conveyance of such real property by such person and any contract made by such person between the time the notice of the application is recorded and the time of the adjudication of the court upon the application shall not be valid without the approval of the court.

(b) If, during the pendency of the application, the applicant lodges with any bank, trust company or other depositary a notice of the application certified by the court, such bank, trust company or depositary shall not allow any funds of the alleged incapable person to be withdrawn, between the time the notice of the application is lodged and the time of the adjudication of the court upon the application, without the approval of the court.

(c) The original of the notice of the application shall be filed with the court. [A] The notice [recorded or lodged pursuant to this section] may not be recorded or lodged elsewhere unless it is a copy certified by the court. The notice shall state that an application for appointment of a conservator is pending and shall include the name of the

alleged incapable person, the name of the applicant, the probate district in which the application is pending, and the date of application. The notice shall be signed and acknowledged by the applicant. The notice shall not include the allegation of facts on which the application is based.

Sec. 18. Section 45a-654 of the general statutes **(Appointment of temporary conservator. Duties.)** is repealed and the following is substituted in lieu thereof:

(a) Upon written application for appointment of a temporary conservator brought by any person [deemed] considered by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence or domicile of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee, the court may appoint a temporary conservator if the court finds by clear and convincing evidence that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, [and] (2) immediate and irreparable [injury] harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed [pursuant to this section] and (3) appointment of a temporary conservator is the least restrictive means of intervention available to prevent such harm. The court [may, in its discretion,] shall require the temporary conservator to give a probate bond. The court shall limit the duties[, responsibilities] and [powers] authorities of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings [to justify such limitation] by clear and convincing evidence of the immediate and irreparable harm that must be prevented by appointment of a temporary conservator and that support appointment of a temporary conservator. In making such findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. The court shall set forth each duty and authority of the temporary conservator. The temporary conservator shall have charge of the property or of the person of the [respondent] conserved individual or both for such period [of time] or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650. The court may (A) extend the appointment of the temporary conservator until the disposition of such application under section 45a-650, or for an additional thirty days, whichever occurs first, or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist. A temporary conservator shall have charge of the property or of the person of the conserved individual for not more than sixty days from the date of the initial appointment.

(b) [Except as provided in] Unless the requirement of a report by a physician under this subsection is waived by the court pursuant to subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is [presented to the judge] filed with the application, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court [may issue an order] shall provide for the disclosure of the medical information required pursuant to this subsection to the respondent's attorney, to the respondent on the respondent's request and to any other party considered appropriate by the court..

(c) On receipt of the application for the appointment of a temporary conservator, the court shall issue notice to the respondent, appoint counsel and conduct a hearing on the application in the manner pursuant to sections 45a-649 to 45a-650, inclusive, of the general statutes, as amended, except that (1) notice to the respondent shall be given not less than five days before the hearing, which shall be conducted not later than seven days after the application is filed, excluding Saturdays, Sundays, and holidays or (2) notice to the respondent, where an application has been made ex parte for a temporary conservator, shall be given not more than forty-eight hours after the ex parte appointment of a temporary conservator, with the hearing on such ex parte appointment being conducted not later than three days after the ex parte appointment, excluding Saturdays, Sundays and holidays. Service on the respondent of the notice of the application for the appointment of a temporary conservator shall be in hand and shall be made by a state marshal, constable or an indifferent person. Notice shall include (A) a copy of the application for appointment of temporary conservator and accompanying physician's report, (B) a copy of an ex parte decree, if any, appointing a temporary conservator, and (C) the date, place and time of the hearing on the application for the appointment of a temporary conservator. After hearing and on making the findings required in this section, the court may appoint a temporary conservator. If notice is provided to the next of kin under this section, such report of the physician shall not be disclosed to the next of kin except by order of the court.

(d)(1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection [(d)] (c) of this section would cause immediate and irreparable injury to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon receiving the evidence and making the findings required in subsection (a) of this section, provided the court makes a specific finding in any decree issued on the application stating the immediate or irreparable [injury] harm that formed the basis for the court's determination and why such hearing and appointment was not required before issuance of the ex parte order of appointment. If an ex parte order of appointment of a conservator is made, a hearing on the application for appointment of a temporary conservator shall be commenced not later than three days, excluding Saturdays, Sundays and holidays, after the ex parte order was

issued. An ex parte order shall expire not later than three days after the order was issued, unless a hearing on the order commenced before expiration of the three-day period has been continued for good cause.

[(2) After making such ex parte appointment, the court shall immediately: (A) Appoint an attorney to represent the respondent, provided if the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund; (B) schedule the date, place and time of a hearing to be held not later than seventy-two hours after the issuance of the court's decree, excluding Saturdays, Sundays and holidays; and (C) give notice by [mail, or such other notice as the court deems appropriate, on the respondent, the respondent's next of kin and such attorney, which notice shall include: (i) A copy of the application for appointment of temporary conservator and the accompanying physician's report; (ii) a copy of the decree appointing a temporary conservator; and (iii) the date, place and time of the hearing scheduled pursuant to subparagraph (B) of this subdivision, except that if the court determines that notice to the respondent under this subdivision would be detrimental to the health or welfare of the respondent, the court may give such notice only to the respondent's next of kin and the respondent's attorney.]

[(3)](2) After [such] a hearing held under this section, the court [shall] may appoint a temporary conservator, or confirm or revoke the appointment of the ex parte temporary conservator, if any, or may modify the duties[, responsibilities or powers] and authorities assigned under such appointment.

[(d) If the court determines that an ex parte appointment of a temporary conservator pursuant to subsection (c) of this section is not appropriate but finds substantial evidence that appointment of a temporary conservator may be necessary, the court shall hold a hearing on the application. Unless continued by the court for cause, such hearing shall be held not later than seventy-two hours after receipt of the application, excluding Saturdays, Sundays and holidays. Prior to such hearing, the court shall appoint an attorney to represent the respondent in accordance with subsection (c) of this section and shall give such notice as it deems appropriate to the respondent, the respondent's next of kin and such attorney, which notice shall include a copy of the application for appointment of a temporary conservator and the accompanying physician's report. After hearing and upon making the findings required in subsection (a) of this section, the court may appoint a temporary conservator.]

(e) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court may not appoint a temporary conservator unless it has been shown by clear and

convincing evidence that (1) the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall [(1)] make a specific finding in any decree issued on the application stating why medical evidence was not required[, and (2) schedule a hearing in accordance with subsection (c) or (d) of this section, which hearing shall take place not later than seventy-two hours after the issuance of the court's decree].

[(f) Except as provided in subsection (g) of this section, a temporary conservator may not change the respondent's residence unless a court specifically finds, after a hearing, that such change is necessary.

(g) (1) If the temporary conservator determines it is necessary to cause the respondent to be placed in an institution for long-term care, the temporary conservator may make such placement after the temporary conservator files a report of such intended placement with the probate court that appointed the temporary conservator, except that if the placement results from the respondent's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the respondent would result from filing the report before making such placement, the temporary conservator shall make the placement before filing the report provided the temporary conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the temporary conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the respondent's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The temporary conservator shall give notice of the placement and a copy of such report to the respondent and any other interested parties as determined by the court.

(3) Upon the request of the respondent or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the respondent's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the respondent, either through the respondent's own estate or through private or public assistance, the court shall order that the respondent be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

[(h)](f) Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report and final accounting, if applicable and as directed by the court, with the court of [his or her] such conservator's actions as temporary conservator.

Sec. 19. Section 45a-655 of the general statutes **(Duties of conservator of the estate. Application for distribution of gifts of income and principal from the estate.)** is repealed and the following is substituted in lieu thereof:

(a) A conservator of the estate appointed under section 45a-646, 45a-650 or 45a-654 shall, within two months after the date of [his or her] the conservator's appointment, make and file in the Court of Probate, an inventory under penalty of false statement of [his or her ward] the estate of the conserved individual, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of [his or her] the conservator's appointment. Such inventory shall include the value of the [ward's] conserved individual's interest in all property in which the [ward] such individual has a legal or equitable present interest, including, but not limited to, the [ward's] the conserved individual's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the [ward] conserved individual and those members of the [ward's] conserved individual's family whom [he or she] the conserved individual has the legal duty to support and to pay the [ward's] debts, and may sue for and collect all debts due the [ward] conserved individual The conservator shall use the least restrictive means of intervention in the exercise of its duties and authorities.

(b) Any conservator of the estate of a married person may apply such portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse which the Court of Probate, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45a-177, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under section 45a-649.

(d) In the case of any person receiving public assistance, state-administered general assistance or Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by the Commissioner of Social Services. Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the [ward] conserved individual to the support of the [ward's] conserved individual's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services

pursuant to 42 USC 1396r-5(d)(2)-(4), or (2) any portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse in an amount that exceeds the amount determined allowable by the department pursuant to 42 USC 1396r-5(f)(1) and (2), notwithstanding the provisions of 42 USC 1396r-5(f)(2)(A)(iv), unless such limitations on income would result in significant financial duress.

(e) Upon application of a conservator of the estate, after hearing with notice to the Commissioner of Administrative Services, the Commissioner of Social Services and to all parties who may have an interest as determined by the court, the court may authorize the conservator to make gifts or other transfers of income and principal from the estate of the [ward] conserved individual in such amounts and in such form, outright or in trust, whether to an existing trust or a court-approved trust created by the conservator, as the court orders to or for the benefit of individuals, including the [ward] conserved individual, and to or for the benefit of charities, trusts or other institutions described in Sections 2055(a) and 2522(a) of the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts or transfers shall be authorized only if the court finds that: (1) In the case of individuals not related to the [ward] conserved individual by blood or marriage, the [ward] conserved individual had made a previous gift to that unrelated individual prior to being declared incapable; (2) in the case of a charity, either (A) the [ward] conserved individual had made a previous gift to such charity, had pledged a gift in writing to such charity, or had otherwise demonstrated support for such charity prior to being declared incapable; or (B) the court determines that the gift to the charity is in the best interests of the [ward] conserved individual, is consistent with proper estate planning, and there is no reasonable objection by a party having an interest in the [ward's] conserved individual's estate as determined by the court; (3) the estate of the [ward] conserved individual and any proposed trust of which the [ward] conserved individual is a beneficiary is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such [ward] conserved individual in accordance with such [ward's] conserved individual's established standard of living and for the support of persons the [ward] conserved individual is legally obligated to support; (4) the purpose of the gifts is not to diminish the estate of the [ward] conserved individual so as to qualify the [ward] conserved individual for federal or state aid or benefits; and (5) in the case of a [ward] conserved individual capable of making an informed decision, the [ward] conserved individual has no objection to such gift. The court shall give consideration to the following: (A) The medical condition of the [ward] conserved individual, including the prospect of restoration to capacity; (B) the size of the [ward's] conserved individual's estate; (C) the provisions which, in the judgment of the court, such [ward] conserved individual would have made if [he or she] conserved individual had been capable, for minimization of income and estate taxes consistent with proper estate planning; and (D) in the case of a trust, whether the trust should be revocable or irrevocable, existing or created by the conservator and court approved. The court should also consider the provisions of an existing estate plan, if any. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by the conservator shall be subject to continuing probate court jurisdiction in the same manner as a testamentary trust

including periodic rendering of accounts pursuant to section 45a-177. Notwithstanding any other provision of this section, the court may authorize the creation and funding of a trust that complies with section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. The provisions of this subsection shall not be construed to validate or invalidate any gifts made by a conservator of the estate prior to October 1, 1998.

Sec. 20. Section 45a-656 of the general statutes **(Duties and authorities of conservator of the person)** is repealed and the following is substituted in lieu thereof:

(a) The conservator of the person shall have only those authorities and duties expressly assigned pursuant to section 45a-650 of the general statutes and may have: (1) The duty and responsibility for the general custody of the [respondent] conserved individual; (2) the [power] authority to establish [his or her] the conserved individual's [place of abode] residence within the state, subject to the provisions of section 45a-656a of this act; (3) the [power] authority to give consent for [his or her] such individual's medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the [ward] conserved individual; and (5) the duty to take reasonable care of the [respondent's'] personal effects of such individual.[; and (6) the duty to]

(b) In carrying out the authorities and duties assigned by the Probate Court, the conservator of the person shall exercise such authorities and duties in a manner that is the least restrictive means of intervention and shall (1) assist the conserved individual in removing obstacles to independence, (2) assist the such individual in achieving self-reliance, (3) ascertain the conserved individual's views, (4) make decisions in conformance with the conserved individual's reasonable and informed expressed preferences, (5) make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved individual, and (6) make decisions in conformance with such individual's expressed health care preferences, including health care instructions and other wishes authorized in sections 19a-580e, unless otherwise provided in subsection (b) of section 19a-580e and section 19a-580g of the general statutes. The conservator shall afford the conserved individual the opportunity to participate meaningfully in decision-making in accordance with the conserved individual's abilities and shall delegate to the conserved individual reasonable responsibility for decisions affecting such individual's well-being..

(c) The conservator shall report at least annually to the [probate court which] Probate Court that appointed the conservator regarding the condition of the [respondent] conserved individual, the efforts made to encourage independence and whether appointment of a conservator is the least restrictive means of intervention for managing the conserved individual's needs. The [preceding] duties, responsibilities and [powers] authorities under this section shall be carried out within the [limitations of the] resources available to the [ward] conserved individual, either through [the ward's] the individual's own estate or through private or public assistance.

[(b)](d) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill

except under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 359.

[(c) (1) If the conservator of the person determines it is necessary to cause the ward to be placed in an institution for long-term care, the conservator may make such placement after the conservator files a report of such intended placement with the probate court that appointed the conservator, except that if the placement results from the ward's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the ward would result from filing the report before making such placement, the conservator shall make the placement before filing the report provided the conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the ward's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement and a copy of such report to the ward and any other interested parties as determined by the court.

(3) Upon the request of the ward or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the ward's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the ward, either through the ward's own estate or through private or public assistance, the court shall order that the ward be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

Sec. 21. (NEW) (Section 45a-656a. Restriction on placement of conserved individual in institution for long-term care.) (a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a conservator may not terminate a tenancy or lease of the conserved individual, sell or dispose of any real property or household furnishings of the conserved individual, or change the individual's residence unless a court finds, after a hearing, that such change is necessary or that the conserved individual agrees to such action.

(b) If the conservator determines it is necessary to cause the conserved individual to be placed in an institution for long-term care or to change the conserved individual's residence, the conservator shall file a report of the intended placement in long-term care with the Probate Court that appointed the conservator. The court shall hold a hearing to consider the report. If, after the hearing, the conservator obtains permission of the court, the conservator may make such a placement. The hearing shall be held not less than five days after the filing of the report, excluding Saturdays, Sundays and holidays, and not less than seventy-two hours before the placement in the institution for long-term care, except that if the placement results from the respondent's discharge from a hospital, the conservator may make the placement before filing the report provided the conservator (1) files the report not later than forty-eight hours, excluding Saturdays, Sundays and holidays, after making such placement, and (2) includes in the report a statement as to the hospital discharge and related circumstances requiring the placement of the conserved individual in the institution for long-term care. No such placement made before the filing of the report of the conservator shall continue unless ordered by the Probate Court after a hearing held pursuant to this section.

(c) The report filed under subsection (b) of this section shall set forth the basis for the conservator's determination, what community resources are available and have been considered to avoid the placement, and the reasons why the conserved individual's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement of the conserved individual in an institution for long-term care and a copy of such report to the conserved individual, the conserved individual's attorney, and any interested parties as determined by the court. Service shall be by first-class mail, postage pre-paid. The conservator shall provide a certification to the court that service was made in the manner prescribed by this subsection.

(d) The conserved individual may, at any time, request a hearing by the court on the individual's placement in an institution for long-term care, including the availability of a less restrictive alternative for the individual's placement. On request of the conserved individual made after the initial hearing held under subsection (b), the court shall hold a hearing on the placement not later than ten days, excluding Saturdays, Sundays, and holidays, after receipt by the court of such request. The court is not required to conduct a hearing more than three times in any twelve-month period following the hearing held under subsection (b) authorizing the initial placement, except that the court shall conduct a hearing whenever information not previously available to the court is submitted with a request for a hearing.

(e) After the initial hearing held under subsection (b), the court may hold a hearing on a conservator's report and the placement of the conserved individual in an institution for long-term care in any case even if no request for a hearing is made.

(f) If the court, after a hearing on the placement of the conserved individual in an institution for long-term care, determines that the conserved individual's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the resources available to the conserved individual, either through the conserved individual's own estate or through private or public assistance, the court shall order that the conserved individual be placed and maintained in a less restrictive and more integrated setting.

(g) A conserved individual may waive the right to a hearing required under this section only after the individual's attorney has consulted with the individual and the attorney files with the court a record of the waiver. Such a waiver must represent the individual's own wishes.

(h) For purposes of this section, an "institution for long-term care" means a facility that has been federally-certified as a skilled nursing facility, an intermediate care facility, a residential care home, an extended care facility, a nursing home, a rest home and a rehabilitation hospital or facility.

Sec. 22. Section 45a-659 of the general statutes **(Conservator of nonresident's property.)** is repealed and the following is substituted in lieu thereof:

(a) If any [person] individual not domiciled [out of] in this state, and owning real property or tangible personal property in this state is incapable of managing his or her affairs, the [court of probate] Court of Probate for the district in which the property or some part of it is situated may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person in the state where the incapable person is domiciled and after notice pursuant to section 45a-649 or such reasonable notice as the court may order, and a hearing as required pursuant to section 45a-650 appoint a conservator of the estate for the real property and tangible personal property in this state of the incapable person pursuant to section 45a-650.

(b) If a conservator of the estate has been appointed for such an incapable person in the state of such person's domicile, (1) the court may, on application of the out-of-state conservator to act as conservator for real or tangible personal property of the incapable person in this state, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the state of the incapable person's domicile, and (2) if the application is for the appointment of a person other than the out-of-state conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-state appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in an out-of-state jurisdiction includes any person serving in the equivalent capacity in such state.

(c) The conservator of the estate for the property in this state shall give a probate bond, and shall, within two months after the date of his or her appointment, make and file

in the court of probate, under penalty of false statement, an inventory of all the real property and tangible personal property in this state of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

(d) The proceeds of any sale of [either] the real or tangible personal property, or [both] the tangible personal property, itself, may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the state where the incapable person is domiciled, following the application and proceedings which are required by section 45a-635.

(e) If an application for a conservator is made pursuant to this section, the Probate Court may not proceed to act on the application until an attorney is appointed to represent the individual. An attorney shall be appointed in the manner provided in section 15 of this act.

Sec. 23. Section 45a-660 of the general statutes **(Termination of conservatorship. Review by court.)** is repealed and the following is substituted in lieu thereof:

(a)(1) A conserved individual may, at any time, petition the Court of Probate having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved individual shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Probate Court, unless the hearing is continued for good cause. If such hearing is not held in such thirty-day period, the conservatorship shall terminate. If the [court of probate] Court of Probate having jurisdiction finds a [ward] conserved individual to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of [his or her] the conserved individual's property be restored to the [ward] conserved individual. (2) If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the [ward] conserved individual, upon such conservator or person giving such probate bond, if any, as the court orders. (3) If any [ward] conserved individual having a conservator dies, [his or her] the conserved individual's property other than property which has accrued from the sale of [his or her] such individual's real property shall be delivered to [his or her] the conserved individual's executor or administrator. The unexpended proceeds of [his or her] the conserved individual's real property sold as aforesaid shall go into the hands of the executor or administrator, to be distributed as such real property would have been.

(b) (1) In any case under subsection (a) of this section the conservator shall file in the court [his or her] the conservator's final account, and the court shall audit the account and allow the account if it is found to be correct. If the [ward] conserved individual is living, the [ward] individual and [his or her] the individual's attorney, if any, shall be entitled to notice by regular mail of any hearing held on the final account. (2) The [court of probate] Court of Probate having jurisdiction shall send written notice annually to the [ward] conserved individual and [his or her] the individual's attorney that the [ward] conserved individual has a right to a hearing under this section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than thirty days from the receipt of the [application] request unless continued for cause shown.

(c) The court shall review each conservatorship [at least every three years and] no later than one year after the conservatorship was ordered and no less than every three years after such initial review. After such a review, the court shall continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the [ward] conserved individual. The conservator and a physician licensed to practice medicine in this state shall each submit a written report to the court within forty-five days of the court's request for such report. On receipt of a written report, the court shall provide a copy to the conserved individual and attorney for the conserved individual. If the [ward] conserved individual is unable to request or obtain an attorney, the court shall appoint an attorney. If the [ward] conserved individual is unable to pay for the services of the attorney, the rates of reasonable compensation of such attorney shall be established by, and the attorney shall be paid from funds appropriated to, the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such rates of compensation shall be established by the Probate Court Administrator and the attorney shall be paid from the Probate Court Administration Fund. The physician shall examine the [ward] conserved individual within the forty-five-day period preceding the date of submission of the physician's report. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court may issue an order for the disclosure of medical information required pursuant to this subsection but shall issue such an order of disclosure for the conserved individual's attorney. No later than thirty days after receipt of the conservator's report and physician's evaluation, the attorney for the conserved individual shall notify the court that the attorney has met with the conserved individual and shall inform the court whether a hearing is being requested. Nothing in this section shall prevent the conserved individual or the individual's attorney from requesting a hearing at any other time as allowed by law.

(d) If the court [determines] finds, after receipt of the reports from the attorney for the [ward] conserved individual, the physician and the conservator, [that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician] by clear and convincing evidence, that the conserved individual continues to be incapable of managing the conserved individual's affairs and that there are no less restrictive means available to assist the conserved individual in managing the individual's affairs, the court shall

continue or modify the conservatorship under the terms and conditions of appointment of a conservator under section 45a-650, as amended by this act. If the court does not make such a finding of continuing incapacity by clear and convincing evidence, the court shall terminate the conservatorship. A hearing on the condition of the conserved individual shall not be required, but the court, in its discretion, may hold such hearing. If the conserved individual, attorney or conservator requests a hearing, the court shall hold a hearing within thirty days of such request.

Sec. 24. Section 45a-662 of the general statutes **(Conveyance of property by order of court.)** of the general statutes is repealed and the following is substituted in lieu thereof:

The [court of probate] Court of Probate in which [the] a conservator [of any incapable person] has been appointed may, concurrently with courts of equity, order such conservator to convey the interest of [his ward] the conserved individual in any real property which ought in equity to be conveyed to another person.

Sec 25. Section 45a-679 of the general statutes **(Conflicts between plenary guardian, limited guardian, conservator of the estate or person and temporary conservator to be resolved by Probate Court.)** is repealed and the following is substituted in lieu thereof:

If a ward or conserved individual has both a plenary guardian or limited guardian of the person with mental retardation and a conservator of the estate or person or a temporary conservator who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the court of probate making the appointment of such guardian or conservator and such court shall, after a hearing, order the course of action which in its discretion is in the best interest of the ward or conserved individual.

Sec. 26. (NEW) (Section 45a-701. Application for writ of habeas corpus.) (a) An individual subject to guardianship or involuntary conservatorship under chapter 802h may apply for and is entitled to the benefit of the writ of habeas corpus without having previously exhausted other available remedies including, but not limited to, the right to appeal the order of guardianship or involuntary conservatorship. The question of the legality of such guardianship or involuntary conservatorship shall be determined by the court or judge issuing such writ.

(b) A writ of habeas corpus shall be directed to the guardian of the person or the estate of the ward or to the conservator of the conserved individual and if illegality or invalidity of the guardianship or involuntary conservatorship is alleged in such writ, a copy shall also be directed to the judge of the court that issued the order as to such claim.

(c) An application for a writ of habeas corpus under this section shall be brought to either the Superior Court or the Court of Probate.

(d) If such application has been brought in the Court of Probate, the Probate Court Administrator shall appoint a three-judge court from among the several judges of probate

to hear such application. Such three-judge court shall consist of judges who are attorneys-at-law admitted to practice in this state. The judge of the Court of Probate who issued the order shall not be a member of the three-judge court. No such application shall be denied without the vote of at least two judges of the three-judge court. The judges of such court shall designate a chief judge from among their members. The three-judge court shall cause a recording to be made of all proceeding held under this section. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator. All records for any case before the three-judge court shall be maintained in the Probate Court in which the conservator or guardian was appointed.

(e) Hearing under this section shall be heard not later than ten days, excluding Saturdays, Sundays and holidays, after return of service of the writ.

(f) If the court or judge before whom such a writ is brought decides that the involuntary representation or guardianship is not illegal, such decision shall be considered a final judgment and subject to appeal.

(g) If the court or judge before whom such case is brought decides that the involuntary representation or guardianship is not illegal, such decision shall not bar issuance of such a writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was conserved or if such application is based on a ground different from that relied on in an earlier application. Such writ may be applied for by an individual subject to guardianship or involuntary conservatorship or on the behalf of such individual by any relative, friend or person interested in such individual's welfare.

(h) An appeal to the Superior Court of a decision rendered by a three-judge court under this section shall be filed in the judicial district in which the Probate Court that issued the order appointing a guardian or involuntary conservator is located. Such appeal shall be heard not later than thirty days of the return of service of the appeal.

Sec. 27. Section 45a-663 of the general statutes **(Compensation of conservator if [ward] <u>conserved individual</u> unable to pay.)** is repealed and the following is substituted in lieu thereof:

If a [ward] <u>conserved individual</u> is unable to pay for the services of a conservator appointed pursuant to the provisions of sections 45a-593 to 45a-700, inclusive, the reasonable compensation of such conservator shall be paid from the Probate Court Administration Fund established under section 45a-82, pursuant to rules and regulations and at rates established by the Probate Court Administrator.

Sec. 28. (NEW) (Sec. 17a-716. Writ of habeas corpus.) An individual confined in a hospital or inpatient treatment facility for treatment of alcohol or drug dependency in this state may seek a writ of habeas corpus in the Superior Court. The question of the legality of such confinement shall be determined by the court or judge issuing such writ. The writ shall be directed to the superintendent or director of the hospital or treatment facility and, if illegality or invalidity of the commitment is alleged in such writ, a copy shall also be directed to the judge of the committing court as to such claim. Such judge

shall be represented by the state's attorney for the judicial district in which such committing court is located. If the court or judge before whom such case is brought decides that the confinement is not illegal, such decision shall not bar issuance of such writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was confined. Such writ may be sought by the confined individual or on behalf of the individual by any relative, friend or person interested in the individual's welfare. Court fees may not be charged against the superintendent or director of the hospital or the judge.

Sec. 29. Section 49-11 of the general statutes **(Release of mortgage by executor, administrator, spouse, next of kin, guardian, conservator or other suitable person.)** is repealed and the following is substituted in lieu thereof:

The executor of the will or administrator of the estate of any deceased mortgagee, or the spouse or next of kin, or other suitable person whom the court [deems] considers to have a sufficient interest, to whom a decree is issued under section 45a-273, and any guardian [or conservator] whose ward or conservator whose or conserved individual as defined in section 45a-644, as amended, is a mortgagee, may, on the payment, satisfaction or sale of the mortgage debt, release the legal title to the party entitled thereto.

Sec. 30. Section 12-45 of the general statutes **(Return to assessors of personalty in trust.)** is repealed and the following is substituted in lieu thereof:

Each sole trustee residing in this state, having in his hands personal property liable to taxation belonging to the trust estate, shall make return thereof to the assessors of the town where he resides. If such personal property is in the hands of more than one trustee, if they all reside in the same town, they shall cause such return to be made by one of their number in such town; if they do not all reside in the same town, they shall cause such return to be made by one of their number, residing in the town in which the affairs of such trust are managed and administered, to the assessors of such town; but, if none of such trustees resides in such town, they shall designate one of their number who shall make such return to the assessors of the town where he resides. Each guardian or conservator shall make return of the personal estate of [his] the guardian's ward or the conservator's conserved individual to the assessors of the town in which such ward or conserved individual resides.

Sec. 31 Section 19a-580e of the general statutes **(Conservator's duty to comply with [ward's] conserved individual's health care instructions. Precedence of health care representative's decisions. Exceptions.)** is repealed and the following is substituted in lieu thereof:

(a) Except as authorized by a court of competent jurisdiction, a conservator shall comply with a [ward's] conserved individual's individual health care instructions and other wishes, if any, expressed while the [ward] conserved individual had capacity and to the extent known to the conservator, and the conservator may not revoke the [ward's]

conserved individual's advance health care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health care decision of a health care representative takes precedence over that of a conservator, except under the following circumstances: (1) When the health care decision concerns a person who is subject to the provisions of section 17a-566, 17a-587, 17a-588 or 54-56d; (2) when a conservator has been appointed to a [ward] conserved individual who is subject to an order authorized under subsection (e) of section 17a-543, for the duration of the [ward's] conserved individual's hospitalization; or (3) when a conservator has been appointed to a [ward] conserved individual subject to an order authorized under section 17a-543a.

Sec. 32. Sections 45a-191 **(Interest of appellant to be stated.)** and 45a-192 **(Order of notice.)** of the general statutes are repealed.

Sec. 33. This act shall take effect on October 1, 2007.

Testimony of Judge Robert K. Killian, Jr.
Conservators in Connecticut
Before the Judiciary Committee
March 30, 2007

(SB1439)

My name is Bob Killian and for the past 23 years I have had the privilege of serving as Probate Judge for the District of Hartford, Connecticut's largest probate district.

I appear before you today in that capacity, but also as Chairman of the Probate Administrator's Committee to Review Connecticut Conservatorship Laws and Procedures. I want to report to you that this was a very hard-working committee. Hours of subcommittee work preceded many hour of plenary sessions at which proposed legislation, previously provided to you, was developed.

I also want to report that the ten members of this committee came to it from a number of different perspectives: Patient's Rights Advocates, Hospital Administrators, lawyers in private practice, a Medical Doctor specializing in geriatric psychiatry, a law professor with a well deserved reputation as a civil libertarian, representatives of DSS and two—only two—representatives of the Probate Courts, myself and Attorney Cynthia Blair.

Despite our differing perspectives, however, I am happy to report that this is not a "compromise" proposal. You see, there was unanimity among the committee members that our existing law had shortcomings in its procedural due process, substantive due process and—perhaps most importantly—in the philosophical underpinnings that dictate the role a conservator should take in serving the needs of a conserved individual.

Please allow me to highlight some significant changes.

Procedural due process safeguards enhanced in this bill relate to in hand service of process on the respondent as a jurisdictional safeguard and notice to other known necessary parties as a precondition to jurisdiction; a statutory definition of the right to counsel including when deference must be given to the respondent's selection of counsel, and a clearer understanding of what counsel must due to meet the constitutional requirement of effectively representing their client. Additionally, recording of all conservatorship hearings is mandated and appeals are streamlined, eliminating the need to go to the Probate Court for "permission" to appeal. Appeals are on the record and the bill establishes timetable for Superior Court action on the appeal. Venue for applications and appeals are thoughtfully defined with special attention to those relatively infrequent situations where a petition is filed for a non domiciliary who happens to be in Connecticut. Rules of evidence, historically relaxed in probate

proceedings, are mandated in these cases which involve important Constitutional issues.

Many of these changes are to bring our law into conformity with the proposals contained in the Interstate Compact on Conservatorships/Guardians, a significant proposal of the Uniform Law Commissioners that will be the subject of scrutiny in coming years.

Substantive Due Process changes include detailed findings which the court must make relative to the respondent's functional deficiencies and evidentiary standards clearly established in Conservatorship proceedings so everyone is aware that the burden of proof is on the petitioner to establish by clear and convincing evidence that a respondent requires a conservator. Normal rules of evidence, as promulgated for Superior Court proceedings, will pertain in these proceedings. Hearings must be scheduled at a time and place which will facilitate attendance at the hearing by the respondent. Courts must defer to appropriate surrogates such as health care agents or representative, powers of attorney or representative payees if that sufficiently and securely addresses the respondent's needs. Attorneys representing respondents can only be appointed their conservator upon nomination by the respondent. Respondent's may refuse medical exams ordered by the court in anticipation of a Conservatorship application. All medical evidence will be available to respondent's counsel in connection with the application.

Significantly, the respondent is assured of court hearings before institutionalization (except in limited emergency situations) and will be entitled to a review of appointment of a conservator, with the assistance of counsel, up to three times in any 12 month period as a matter of right and additional times if significant new evidence of capacity emerges.

Habeas corpus is immediately available for review of not only any orders of confinement, but also of any denial of access to financial resources. This may be either to the Superior Court or to a panel of three Probate Court Judges, all of whom will be lawyers and will receive special training.

Appointment of a conservator is intended to be an exercise of the state's parens patriae authority. The proposed legislation tries to set clear limits on conservators so the court assigns them only the authority necessary to address a demonstrated need of the conserved party. Conservator decisions that once made are difficult to undo, such as surrendering an apartment or permanently relocating a conserved party to a nursing home, will require prior court approval. Conservators must allow their charges to exercise as much independent decision making as they can muster. A respondent can challenge not only the Court's finding that a conservator is necessary, but the scope of the conservator's duties.

Over 4,000 new conservators are appointed every year in Connecticut. Over 19,000 people in Connecticut currently have a conservator. The bulk of these appointments are made in urban courts, such as mine, which appointed almost 10% of last year's conservators and has over 12% of the open cases. The overwhelming majority of the appointments is vital to the health and welfare of the conserved individual, who, but for the involvement of these fiduciaries, would often face serious deprivation, sometimes death. In most cases, where they are aware a conservator has been appointed, they welcome the assistance and, in many instances, ask for the help.

The operative word in the last sentence is help. It is the overriding philosophical goal of this proposed revision to try to insure that what a respondent gets is not more than they need; that their personal autonomy is intruded upon only to the extent absolutely necessary to insure their health and well being; and that decisions capably made by an individual are not rejected by a conservator only because of a disagreement about what level of risk can be assumed in the community or what standard for medical treatment is desired, or when an individual is prepared to accept the wisdom embodied in a simple statement from my Father, who in his last months of life, refused surgery because, in his words, "the parts aren't supposed to last forever."

Distinguished Chair, I am proud to transmit this proposal to you.

SB 1439 March 30, 2007 Judiciary Committee
John Hubbard, of Torrington, CT & Voluntary Patient Advocate for Tony P.

Thank you for the opportunity to speak to the committee

The 31 page substitute SB 1439 **will bring Connecticut's conservator law more into line with some of the more enlightened national models such as the "Uniform Guardianship & Protective Procedures Act" of 1997 and the Model Probate Code. A key element of the legislation is that conservatorship shall be guided by the principle of "least restrictive means of intervention" – that is, intervention sufficient to meet the individual's needs while permitting him or her to retain the maximum amount of independence and self-determination.** A quote from an email from Peter B. Case President Stamford/Greenwich NAMI.

http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ugppa97.pdf will allow you to print the **UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997)**

I, as the next friend to Tony P., would like to see Tony given in this year's legislation the following:

1. **The right to access his home probate court of Torrington, CT. (This is extremely important. Currently he only has access to the probate court nearest the facility he is in. This is a violation of Due Process.)**
2. **The right to choose his own conservator. (Under current law he has no right at all to choose his conservator.)(This a violation of Due Process and if the person is from his church, it is a violation of the Federal RUILPA Act, institutionalized persons provision.**
3. **He should have the right to access the full spectrum of medical services including complementary medicine. This is a bigger problem when he is denied access to the conservator of his choice. It makes a difference who is the conservator.**
4. **If Tony is unable to propose a conservator for himself, he needs to have the right to have the conservator manage only those affairs that he is unable to do for himself or have a friend or family member provide.**

The Story

I first want to thank the staff that has done the day to day work to care for Tony P.

When any link in a chain of events is broken then you may get a different outcome: If SB 1439 had been passed prior to 2004 most of the following sequence of events would probably not have occurred. **Pg 1(over)**

Confidentiality cuts both ways, it can also protect the institution. Tony P. is a middle aged psychiatric patient in Connecticut with a common law wife of now 18 years. They did not marry due to fear of impoverishment by marriage. Tony P., A lifelong resident of Torrington, lived independently until he came into the system almost three years ago on a 15 day certificate primarily due to his homelessness and the effect that had on his medication. The name of the facility and the name of the probate judge will remain nameless. The issues are important not the players.

Tony P. came before the Probate Judge at the facility(Not neutral ground) for a conservator hearing in 2004. He was not allowed to have his hometown probate judge hear his case because he was deemed a citizen of the town of the facility on the day he entered the facility. The Judge appointed him an attorney for the day.

The judge ruled that it(the conservatorship) must be involuntary even though the patient wanted a conservator. The judge rejected a request from the patient to have his court appointed lawyer propose John Hubbard, from his hometown, as his conservator. The Judge said he would prepare the documents, if needed.

The Judge read a letter of recommendation for John Hubbard from the Mayor of Torrington. The judge threatened to subpoena the mayor. It seems that the Mayor was treated as meddling in the facilities town's affairs(Since Tony P. was no longer a citizen of the City of Torrington on the day he entered the facility).

The Pastor of Tony P., Rev. Micheal Ambrose from Torrington attended the hearing. When tried to speak, the Judge prevented him from speaking one word by saying "We do not need to hear from God". There was no transcript and therefore this is no official record.

The Attorney for Tony P. was only appointed for the day. There is no continuity of counsel. The counsel brought no witnesses to the hearing or provided resources to do so . The Attorney never scheduled an outside evaluation of the patient or provided resources to do so. The attorney was limited to asking some polite questions of the row of the facility staff.

The patient does not appear to have any legal standing to suggest his own conservator.

The Judge ruled that a Non-Torrington area Attorney that Tony P. had never met, and was proposed by the facility and located by the local mental health agency in Torrington be his involuntary conservator of his person and his estate. The local mental health agency that located the conservator had severely mismanaged Tony P.'s care in Torrington by never finding a suitable home (one that understood his condition).

continued

After the first Probate conservatorship hearing, CLRP prepared documents to give John Hubbard access to Tony P.'s medical records at the facility. The Facility at first denied that the signed documents had any legal bearing on the facility and refused to give Mr. Hubbard any information. Only after considerable negotiations between the facility and CLRP was any medical information released.

After Several months Tony P was put on a locked ward with TBI(Traumatic Brain Injuries) Patients even though the facility has never been able to provide any documentation that he ever suffered a TBI injury. He remains on this ward to this day.

A grievance was filed in late 2006 with the facility grievance officer on various issues. The letter came back claiming certain items were not grievable, others were more than 45 day old, and could not be acted on, etc. The facility other than the grievance officer has never contacted me about the grievance. The grievance window needs to be increased to 2 year to agree with most civil court requirements.

In 2005, at the request of the patient, The selection of conservator was reheard and no change was made. The attorney was asked to prepare an appeal to the Superior court but he refused. A pro se automatic appeal to the superior Court was sent to the probate Judge. The client has been unable to locate an attorney to follow up on the timely filed automatic appeal. Connecticut Legal Aid will not take the case until he reaches age 60.

In 2006 the patient developed an undiagnosed problem symtomized by a low white blood count. The facility refused to bring him to see a nutritionist even though they could not diagnose his problem and then suspended his discharge planning due to his illness. During an annual review with the probate Judge, it was requested that the Judge order the facility to have the patient see a nutritionist. The Judge refused to order the facility to take the patient to a nutritionist even though the facility was unable to diagnose the problem. The problem resolved itself in 2007 when the facility reduced his psychiatric meds from 10 to 3.

Quinnipiac University School of Law
Health Law Clinic
275 Mt. Carmel Avenue Hamden, CT 06518
Tele: 203. 582-3238 Fax: 203. 582-3237

TESTIMONY BEFORE JUDICIARY COMMITTEE ON RAISED SENATE BILLS 1439, 1453, AND 1272, AND IN SUPPORT, GENERALLY, OF CONSERVATORSHIP REFORM EFFORTS IN CONNECTICUT

March 30, 2007

Good afternoon Senator McDonald, Representative Lawlor, and members of the Committee. My name is Royal Stark. I am the Director of the Health Law Clinic at the Quinnipiac University School of Law, a position I have held since 1998. In the years since becoming a clinical law professor I have handled a number of probate matters, appearing in probate courts around the state including Bridgeport, Hartford, Middletown, New Haven, New London, Newington, South Windsor and Waterbury, as well as handling probate appeals in the Superior Court and before the Appellate Court and Supreme Court. It is through my practical experience litigating probate cases, primarily cases regarding involuntary conservatorships, that I have come to understand the acute need for probate reform in Connecticut, especially in the area of conservatorships.

I am here today, as I was a year ago, to speak in support, generally, of improving the operations of the state's probate courts and in support of revising and reforming our statutory scheme regarding conservatorships. Over the past year I have been directly and significantly involved in debating and drafting much of the language before this committee regarding conservatorships. It is in that capacity that I testify today in support of the language in Senate Bills (S.B.) 1439, 1453 and 1272, as well as in support of language attached to my testimony that I urge this committee to adopt in lieu of that currently in S. B. 1439.

That language is the result of an intensive months-long effort by a Conservator Revision Committee formed at the behest of Judge Lavery and Judge Lawlor upon which I proudly serve. The language presented to you by that committee represents not only the consensus of opinion of the members of that committee, but also represents a growing and broad consensus that the statutes, regulations, rules, processes and procedures regarding conservatorships in Connecticut need to be revised and reformed. The language in the proposed legislation put forward by the Conservator Revision Committee represents many hours of thoughtful analysis, spirited debate, and good faith compromising by the various members of the committee whose names and affiliations have been provided to you by Judge Killian, the chair of our committee. The language attached to my testimony for your consideration is also the product of the thoughtful and artful drafting by David Bicklen, who, as you all know, is the former chair of the law revision commission.

My knowledge of, and opinion about a growing and broad consensus that conservatorship reform is needed comes out of my work over the past several months with a working group of the bar association which was formed initially to look at ways that the provisions of the Uniform Guardianship and Protective Proceedings Act of 1997 (UGPPA) could be implemented in Connecticut. The draft legislative proposals that came out of the debates and discussions of the members of that working group, which included individuals who hold or who have held high office in the bar association and its sections, formed the core of the language in S.B. 1439 as well as the language in the Conservator Revision Committee's proposed legislation; language that I urge the committee to approve by amending S.B. 1439, replacing the language therein with the language proposed by the Conservator Revision Committee, and voting the proposal out of committee.

Before going further into the conservatorship reforms I urge this committee to approve and move forward, I first want to state my support for the general probate reforms contained in S.B. 1272; reforms that will improve the probate courts and provide for greater oversight of the more than 100 probate courts doing business each week in Connecticut. I support giving the probate court administrator more authority to make and enforce regulations that will improve the operations of the court, the level of judging, and the overall effectiveness and fairness of the probate courts in Connecticut.

That being said, the primary purpose for my testimony is to urge that this committee approve and adopt language that is before the committee that is necessary and overdue, and that will drastically improve Connecticut's laws regarding conservatorships. I do not need to tell the members of this committee about the significant restrictions to rights and liberties that occur to disabled or elderly individuals who are adjudicated incapable and have an involuntary conservator appointed for the individual. Sometimes the appointment of an involuntary conservator is appropriate and serves to protect the individual brought before the court. However, in too many cases the appointment of an involuntary conservator is far too easy, and occurs without the allegedly incapable individual receiving the protections that the legislature has already recognized are required and that are consistent with our constitutional system of government which restricts intrusions into the lives of citizens, and our general notions of freedom, liberty and fair play. The proposed legislation brought before this committee is intended to, and will if enacted, properly enlarge the protections that an individual will get from the court system both at the outset of legal proceedings where the appointment of a conservator is sought, and throughout any subsequent period when an involuntary conservator has been appointed.

As mentioned above, over the past year I have had the weighty (and exhausting) privilege to work with groups that have been tirelessly seeking concrete and specific ways to revise, reform and improve our statutory scheme regarding conservatorships. In October of last year I had the honor of being one of many presenters at a day-long symposium put on by the Connecticut Bar Association on the topic of conservatorships, where I shared the dais with judges, professors and practitioners from around the

country who spoke of the reform efforts already enacted in parts of the country and the reforms still needed in Connecticut regarding conservatorships.

Through my work with the bar association UGPPA working group, I became aware that practitioners in this state with varied conservatorship experiences and a varied clientele, from wealthy elderly individuals to low-income mentally and physically disabled persons, shared concerns that our laws, procedures and practices in the area of conservatorships were inadequately protective of liberties and rights, that appointments by courts were too often too intrusive, and that attorneys involved in these cases needed to do more, needed to be held to high standards and needed, assiduously, to avoid any real or perceived conflicts of interest. Also, the need to revise, reform and simplify the probate appeals process was in the best interest of just about everyone, including lawyers, clients, judges, and court personnel.

These concerns were echoed in the lengthy meetings of the sub-committees and the full Conservator Revision Committee that I attended during the past four months. In order for the participants in conservatorship proceedings, and the public at large, to have faith in the judicial system that appoints conservators, and to see it as truly protective, and not punitive in nature, where only those restrictions on rights and liberties that are absolutely necessary occur, it is necessary for the reforms before this committee today be enacted by the legislature.

I concede that not everyone involved in these matters is in favor of every one of the provisions put forth for your consideration. Nonetheless, I know first-hand from my many discussions with stakeholders over the past several months that those who bring applications for involuntary representation, those who oppose or seek to limit them most of the time, those who serve as court-appointed conservators, those who work in the courts and those who evaluate and adjudicate the cases are in agreement that reform is needed. The proposals put forth in S.B. 1439 and the language in the proposal of the Conservator Revision Committee are the consensus work product of an awful lot of dedicated effort, thoughtful consideration, concern for the individuals who find themselves before the courts on both sides of these matters, and concern for justice generally.

Finally, although it is not a part of either S.B. 1439 or the proposal of the Conservator Revision Committee, I remain in favor of having a right to remove conservator cases from the probate court to the superior court, which is why I support the language in S.B. 1453 that goes to this issue. S.B. 1453 contains many good provisions that are worthy of the support of this committee. However, if the language of the Conservator Revision Committee is approved, a lot of what is in S.B. 1453 will become superfluous, but not all of it. Even if the reforms before you are forwarded by this committee and enacted by the full General Assembly, there will still be a need to allow persons in danger of losing rights and liberties in conservatorship proceedings to remove their cases from the probate courts. There also needs to be a re-established right to bring a writ of prohibition to contest the jurisdiction of the court entering a conservatorship order or orders. Even with the enactment of sweeping probate reform, the process of enacting

the reforms, and educating judges, court personnel, attorneys, litigants, and the general public about the legislative changes will be a somewhat slow process, as will the process of changing the culture in the probate courts regarding conservatorships. Having a right to remove cases to the superior court the same as is already allowed in certain cases in the probate courts regarding custody of children, will add another layer of protection that will be there immediately while the larger reforms proposed today are enacted and put into place and everyday practice in the courts.

The enactment of the reforms advocated today will move Connecticut closer to the standards set out in the Uniform Guardianship and Protected Proceedings Act of 1997 and will enhance the procedural protections to individuals who are brought involuntarily before courts, and will appropriately limit the effects of an appointment of an involuntary representative, such as a conservator, so that a conserved individual will lose only those rights and liberties that are required to be constrained by the court in order for the individual to be protected in core areas of existence, such as the acquisition of adequate nutrition, shelter and medical care, and the protection of financial assets. The appointment of an involuntary conservator should only be done when absolutely necessary when there is no less restrictive alternative available, should be limited in scope and duration so that no unnecessary loss of liberty or rights occurs, and should never be punitive in nature or effect.

Thank you.

Royal J. Stark

There is no testimony for pages 5792 – 5822.

The next page is 5823.

TESTIMONY BEFORE THE JUDICIARY COMMITTEE IN SUPPORT OF RAISE BILL N0. 1439; AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS

By Judith Desautell March 30, 2007

I am survivor of the probate system. I am here to testify in support of reforming the probate system so that others are spared the experience I endured.

I am a former school teacher, mother of two, grandmother of three. I have hereditary spastic paraplegia. I used to own my own home. I had my front yard completely converted to a butterfly garden. I worked with the owner and manager of Colonial Gardens in Tolland for hours planning it. It really was beautiful.

In 2000, Manchester Probate Judge John Cooney held a hearing at my home. He said that someone with my degree of physical disability did not have a brain that functioned. He ruled that I was incapable of managing all of my affairs and appointed a conservator of the estate and person.

I did not need a conservator of the estate. My finances were in perfect order. My mortgage had been paid off early. I had taken out a home equity loan to finance a new roof and upgrade my kitchens. Judge Cooney ordered that I be placed at Westside, a nursing home that had received considerable notoriety for violent assaults by inappropriately placed psychiatric patients. My home was sold to pay full freight for the nursing home care. The proceeds should have been deposited in the disability trust that had been set up by my mother. My personal belongings were thrown out. There was never any thought to place my furniture in storage. I was to be permanently institutionalized. My cat was caught in a net and taken to the dog pound. A stranger made random decisions to put clothes in bags. 10 garbage bags were delivered to the nursing home. One bag contained a dead plant. Several antiques and valuable collectibles were just thrown out. Photos of my family, deceased relatives, were thrown out.

I acknowledge that I needed help. I needed more help to meet my needs in my home. I had been reluctant to get on Title XIX to pay for home care services because I feared I would lose my house. I did not need to be in a nursing home. The proceeds from the sale of the house went to pay for the nursing home bill. I was not allowed to see my medical records. I was not allowed to meet with the press. My mail was opened when I got it. They canceled my medical insurance and credit cards.

The bill before you would have prevented this from happening to me. First, the bill requires probate judges to listen to people like me. I have a brain. I have reasonable wishes and can make reasonable choices. My voice should have figured somewhere in the discussion. Second, the court could have imposed a limited conservator to simply arrange for more comprehensive services. Third, I could have had the case removed to superior court where I am sure I would have gotten a fair hearing before all of my rights were removed. For example, there was no evidence, much less clear and convincing evidence that I could not manage my finances. A conservator of the estate should never have been appointed.

Legal Aid helped me get out of the nursing home and into an apartment. They advised me to get out of Manchester and to have the probate court file transferred to a new judge. I moved to East Hartford. I was restored to capacity by Probate Judge Allan Driscoll who told me that I should never have been conserved and removed from my house. My Vet gave me a cat that someone had brought in to be euthanized. He is welcome in my home. We have suffered a similar experienced.

I ask you to please pass raised bill 1439 to prevent this from happening to others.

STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

JUDGE JAMES J. LAWLOR
ADMINISTRATOR
ATTORNEY THOMAS E. GAFFEY
CHIEF COUNSEL
HELEN B. BENNET
ATTORNEY
DEBRA COHEN
ATTORNEY

186 NEWINGTON ROAD
WEST HARTFORD, CT 06110

TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Andrew McDonald
House Co-Chair Michael Lawlor
Senate Ranking Member John Kissel
House Ranking Member Arthur O'Neill
Honorable Members of the Judiciary Committee

From: Judge James J. Lawlor
Probate Court Administrator

Re: RB 1439 An Act Concerning Conservators and Probate Appeals

Date: March 30, 2007

In recent years the conservatorship process has come under considerable public scrutiny, and has been the object of much criticism. The appointment of an involuntary conservator has a significant impact on the basic rights of the individual who is the subject of such an application. Fundamental due process considerations require that we safeguard the rights of these individuals to the maximum extent possible. There is disagreement regarding the justification of the charges leveled against the probate courts. But the nature and extent of the criticism warrants that the probate system does a thorough evaluation of existing conservatorship practices and procedures.

For that purpose, I called upon one of our most experienced and respected judges, Judge Robert Killian of the Hartford Probate Court, to chair a committee to review the involuntary conservatorship statutes and recommend possible revisions. Judge Killian assembled a diverse committee. Its members include representatives of the legal and medical professions, hospitals, relevant state agencies, legal advocacy groups and academicians. These individuals met numerous times over the last several months, and gave freely of their time and effort in conducting a complete re-examination of the existing statutes. They have engaged in critical and spirited debate on a variety of proposals for change.

Substitute language for this bill is the product of their efforts. Given the diversity of interests and perspectives represented, it should come as no surprise that this bill involves much compromise. Few, perhaps, would argue that this bill is perfect or ideal.

Yet, that is its greatest strength. This diverse group worked closely together in a spirit of compromise, to maximize protection for the rights of some of our most unfortunate and vulnerable citizens. The results represent an honest effort to move the probate system forward, preserving some of its positive aspects, while providing additional protection for individual rights.

I applaud the efforts of Judge Killian and his committee, and I believe that their proposals are worthy of our support. I urge the members of the Judiciary Committee to amend this bill with the language given to you today and favorably pass the bill.

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STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

JUDGE JAMES J. LAWLOR
ADMINISTRATOR
ATTORNEY THOMAS E. GAFFEY
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HELEN B. BENNET
ATTORNEY
DEBRA COHEN
ATTORNEY

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Probate Court Administrator

Re: RB 1439 An Act Concerning Conservators and Probate Appeals SB 1439

Date: March 30, 2007

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Substitute language for this bill is the product of their efforts. Given the diversity of interests and perspectives represented, it should come as no surprise that this bill involves much compromise. Few, perhaps, would argue that this bill is perfect or ideal.

Finally, the bill clearly establishes the right of an individual whose liberty or access to funds has been constrained to seek expeditious review of the Probate action through habeas corpus reviews before a three judge Probate panel or, at the petitioner's option, in the Superior Court. Appeals are streamlined and would be conducted as an "on the record" review in the Superior Court and not as a trial de novo.

I am very pleased with this report. It does require additional Court hearings which will result in a modest increase in indigency expenditures. These are currently paid by the Probate Administration fund, so until that is exhausted there will be no fiscal impact and, if paid for from an appropriation to the Judicial Department, no significant fiscal impact.

I hope you will give this proposal favorable consideration.

Sincerely,

Robert K. Killian, Jr.
Judge

RKK:cmz

enclosures
(1) Committee List
(2) Proposed Statutory language

cc: The Honorable William J. Lavery, State of Connecticut, Chief Court Administrator
The Honorable James J. Lawlor, State of Connecticut, Probate Court Administrator
The Honorable Gerald M. Fox, State Representative

CONSERVATOR REVISION COMMITTEE

Thomas Behrendt
Connecticut Legal Rights Project
Box 351, Silver Street
Middletown, CT 06457

Cynthia A. Blair, Esq.
Hartford Probate Court
250 Constitution Plaza, 3rd Floor
Hartford, CT 06103

Mary Ann Hanley*
Office for Workforce Competitiveness
100 Great Meadow Road, Suite 401
Wethersfield, CT 06109
*(Alternate St. Francis Hosp./Mt.Sinai Campus
Address: 500 Blue Hills Ave., Ste. 200, Hartford, CT 06112

Paul A. Hudon, Esq.
Atlas & Hudon, LLC
95 South Main Street
West Hartford, CT 06107-0670

Phyllis Hyman
State of Conn., Dept. of Social Services
25 Sigourney Street
Hartford, CT 06106

Hon. Robert K. Killian, Jr., Chairman
Hartford Probate Court
250 Constitution Plaza, 3rd Floor
Hartford, CT 06103-2800

Janeanne Lubin-Szafranski, Esq.
St. Raphael Healthcare System, Inc.
659 George Street
New Haven, CT 06511

Dr. Harry Morgan
55 Nye Road, #102
Glastonbury, CT 06033

Valerie O'Rourke
State of Connecticut, Dept. of Social Services
342 Main Street
Danbury, CT 06810

Professor Royal J. Stark
Quinnipiac University School of Law
Legal Clinic, LA101
275 Mt. Carmel Avenue
Hamden, Connecticut 06518

Technical Assistants:

David Biklen, Esq.
153 North Beacon Street
Hartford, CT 06105
Hartford, CT 06105

Thomas E. Gaffey, Esq.
Chief Counsel
State of Conn.
Probate Administration
186 Newington Road
West Hartford, CT 06110

Helen Bennet, Esq.
State of Conn.
Probate Administration
186 Newington Road
W.Hartford, CT 06110

Proposed Legislative Revision
Submitted by the
Probate Administration's
Conservator Statutes Revision Committee

March 23, 2007

Section 1. Section 45a-132a of the general statutes **(Examination of incapable party. Expense.)** is repealed and the following is substituted in lieu thereof:

In any matter before a court of probate in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state. A conserved individual or the respondent to an application for involuntary representation made under section 45a-648, as amended, and temporary representation under section 45a-654, as amended, may refuse to undergo an examination ordered by the court under this section. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such examination or the estate of the alleged incapable in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

Sec. 2. Section 45a-186 of the general statutes **(Appeals from probate.)** is repealed and the following is substituted in lieu thereof:

(a) Any person aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, may, not later than forty-five days after mailing of such order, denial or decree for matters heard under sections. 45a-593, 45a-594, 45a-595, 45a-597, 45a-644 to 45a-677, inclusive, and 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of such order, denial or decree for all other matters in the Court of Probate, appeal therefrom to the Superior Court [in accordance with subsection (b) of this section. Except in the case of an appeal by the state, such person shall give security for costs in the amount of one hundred fifty dollars, which may be paid to the clerk, or a recognizance with surety annexed to the appeal and taken before the clerk or a commissioner of the Superior Court or a bond substantially in accordance with the bond provided for appeals to the Supreme Court.] Such an appeal shall be commenced by filing a complaint in the Superior Court in the judicial district in which such Probate Court is located, except that (1) an appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of subsection 12-395 shall be filed in the judicial district of Hartford and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the Superior Court for juvenile matters having jurisdiction over matters arising in such probate district. The complaint shall state the reasons for appeal. A copy of the order,

denial or decree appealed from shall be attached thereto. Appeals from any decision rendered in any case after a [record] recording is made of the proceedings under sections 17a-498, 17a-685, 45a-650, 51-72 and 51-73 shall be on the record and shall not be a trial de novo.

(b) [Any such appeal shall be filed in the superior court for the judicial district in which such court of probate is located except that (1) any appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of section 12-395, shall be filed in the judicial district of Hartford and (2) any appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters arising in such probate district.] A person appealing pursuant to this section shall serve a copy of the complaint on the Probate Court that rendered the order, denial or decree appealed from and on all interested parties. Failure to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50 of the general statutes, service of the copy of the complaint shall be by state marshal, constable, or an indifferent person. Service shall be in hand or by leaving a copy at the Probate Court that rendered the order being appealed, or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with said probate court, except that service on a respondent or conserved individual in an appeal from an action under chapter 802h, part IV of the general statutes shall be in hand by a state marshal, constable or an indifferent person.[TB1]

(c) Not later than fifteen days after filing an appeal under this section, the person appealing shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service and (2) a statement of the date and manner in which a copy of the complaint was served on the Probate Court and each interested party.

(d) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.

(e) A hearing in an appeal from probate proceedings under sections 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703 and 45a-717 shall commence, unless a stay has been issued pursuant to subsection (f) of this section, not later than ninety days after the appeal has been filed.

(f) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Probate Court or the Superior Court. Filing of the motion with the Probate Court shall not preclude action by the Superior Court.

(g) Nothing in this section shall prevent use by an individual aggrieved under subsection (a) of this section of a petition for a writ of habeas corpus, a petition for termination of an involuntary conservatorship or other available remedy.

Sec. 3. (NEW) (Section 45a-186a. Record. Hearing.) (a) In an appeal from an order, denial or decree of the Probate Court made after a hearing that is on the record, the Probate Court, not later than thirty days after service of the appeal under section 45a-186, as amended by this act, or within such further time as may be allowed by the Superior Court, shall transcribe any portion of the recording of the proceedings that has not been transcribed. The Probate Court shall transmit to the Superior Court the original or a certified copy of the entire record of the proceeding from which the appeal was taken. The record shall include, but not be limited to, the findings of fact and conclusions of law, separately stated, of the Probate Court.

(b) An appeal from an order, denial or decree made after a hearing on the record shall be conducted by the Superior Court, including a state referee appointed under section 51-50*l* of the general statutes, without a jury. Such an appeal shall be confined to the record. If alleged irregularities in procedure before the Probate Court are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the Superior Court. The court, on request, shall hear oral argument and receive written briefs.

Sec. 4. (NEW) (Section 45a-186b. Action of Superior Court on appeal) In an appeal taken under section 45a-186, as amended, from a matter heard on the record in the Probate Court, the Superior Court shall not substitute its judgment for that of the Probate Court as to the weight of the evidence on questions of fact. The Superior Court shall affirm the decision of the Probate Court unless the court finds that substantial rights of the person appealing have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) in violation of the federal or state constitutions or statutes of this state, (2) in excess of the statutory authority of the probate court, (3) made on unlawful procedure, (4) affected by other error of law, (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Superior Court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment that modifies the Probate Court order, denial or decree or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

Sec. 5. (NEW) (Section 45a-186c. Costs. Waiver.) (a) In an appeal taken under 45a-186, as amended by this act, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that such costs are allowed in judgments rendered by the Superior Court.

(b) If the appellant claims that such appellant cannot pay the costs of an appeal taken under section 45a-186, as amended, the appellant shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such costs, including the requirement of bond, if

any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render judgment on the application for waiver, which judgment shall contain a statement of the facts found by the court and the court's conclusions based on the facts found. The filing of the application for the waiver shall toll the time limit for the filing of an appeal until such time as a judgment on such application is rendered. A fiduciary acting on an order of the court made after expiration of the period of appeal shall not be liable for actions made in good faith unless such fiduciary has actual notice of the tolling of the appeal period.

Sec. 6. Section 45a-199 of the general statutes **("Fiduciary" defined.)** is repealed the following is substituted in lieu thereof:

As used in sections 45a-143, 45a-152, 45a-202 to 45a-208, inclusive, [and] 45a-242 to 45a-244, inclusive, and section 5 of this act, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

Sec. 7. Section 45a-487c of the general statutes **(Representation by court-appointed conservator or guardian, agent, trustee, executor or administrator, or parent.)** is repealed and the following is substituted in lieu thereof:

In connection with trust matters, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: (1) A court-appointed conservator or guardian of the estate may represent and bind the estate that the conservator or guardian controls; (2) a court-appointed conservator or guardian of the person may represent and bind the ward or conserved individual if a conservator or guardian of the ward's or conserved individual's estate has not been appointed; (3) an agent having authority to do so may represent and bind the principal; (4) a trustee may represent and bind the beneficiaries of the trust; (5) an executor or administrator of a decedent's estate may represent and bind persons interested in the estate; and (6) if a conservator or guardian has not been appointed, a parent may represent and bind the parent's minor or unborn child.

Sec. 8. Subsection (b) of section 45a-593 of the general statutes **(Administrator of Veterans' Affairs to be party in interest.)** is repealed and the following is substituted in lieu thereof:

(b) The Administrator of Veterans' Affairs or [his] such administrator's successor shall be an interested party in the administration of the estate of any ward or conserved individual on whose account the benefits are payable or whose estate includes assets derived from benefits paid by the Veterans' Administration, its predecessor or successor.

Sec. 9. Section 45a-595 of the general statutes **(Investment of funds in insurance and annuity contracts by conservator or guardian of estate.)** is repealed and the following is substituted in lieu thereof:

Upon application of a conservator or the guardian of the estate of a ward or conserved individual, the [court of probate] Court of Probate may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company authorized to conduct business in this state, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested in it.

Sec. 10. Section 45a-644 of the general statutes **(Definitions.)** is repealed and the following is substituted in lieu thereof:

For the purposes of sections 45a-644 to [45a-662] 45a-663, inclusive, the following terms shall have the following meanings:

(a) "Conservator of the estate" means a person, a municipal or state official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of section 45a-654, as amended.

(b) "Conservator of the person" means a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by the Probate Court under the provisions of sections 45a-644 to 45a-662, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of section 45a-654, as amended.

(c) "Incapable of caring for one's self" or "incapable of caring for himself or herself" means that an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health] that results in such individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to meet essential requirements for personal needs.

(d) "Incapable of managing [his or her] the individual's affairs" means that [a person] an individual has a mental, emotional or physical condition [resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from performing] that results in such individual being unable to receive and evaluate information or make or communicate decisions to such an extent that the individual is unable, even with appropriate assistance, to perform the functions inherent in managing [his or her] the individual's affairs, and the [person] individual has property [which] that will be wasted or dissipated unless [proper] adequate property management is provided, or that funds are needed for the support, care or welfare of the [person] the individual or those entitled to be supported by [that person] the individual and that the [person] individual is unable to take the necessary steps to obtain or provide funds [which are] needed for the support, care or welfare of the [person] the individual or those entitled to be supported by such [person] individual.

(e) "Involuntary representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the Court of Probate that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

(f) "Respondent" means an adult person for whom an application for involuntary representation has been filed or an adult person who has requested voluntary representation.

(g) "Voluntary representation" means the appointment of a conservator of the person or estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing [his or her] the individual's affairs or incapable of caring for himself or herself.

(h) ["Ward"] "Conserved individual" means [a person] an individual for whom involuntary representation [is granted] or voluntary representation is appointed under sections 45a-644 to [45a-662] 45a-663, inclusive.

(i) "Personal needs" means needs for an individual such as, but not limited to, food, clothing, shelter, health care and safety.

(j) "Property management" means actions to obtain, administer, manage, protect and dispose of real and personal property, intangible property, business property, benefits and income and to deal with financial affairs.

(k) "Least restrictive means of intervention" means intervention for a conserved individual sufficient to provide, within the resources available to the conserved individual, either from the conserved individual's own estate or from private or public assistance, for a conserved individual's personal needs or property management while affording the conserved individual the greatest amount of independence and self determination.

Sec. 11. (NEW) (Section 45a-644a. Recording of probate proceedings.) A Court of Probate shall cause a recording to be made of all proceedings held under

sections 45a-644 to 45a-663, inclusive. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator.

Sec. 12. Section 45a-645 of the general statutes **(Naming of own conservator for future incapacity.)** is repealed and the following is substituted in lieu thereof:

(a) Any [person] individual who has attained at least eighteen years of age, and who is of sound mind, may designate in writing a person or persons whom [he] such individual desires to be appointed as conservator of his person or estate or both, if [he] such individual is thereafter found to be incapable of managing his affairs or incapable of caring for one's self.

(b) The designation shall be executed, witnessed and revoked in the same manner as provided for wills in sections 45a-251 and 45a-257; provided, any person who is so designated as a conservator shall not qualify as a witness.

(c) Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of section 45a-650, if appointed thereafter as a conservator.

Sec. 13. Section 45a-648 of the general statutes **(Application for involuntary representation. Penalty for fraudulent or malicious application or false testimony.)** is repealed and the following is substituted in lieu thereof:

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing [his or her] the respondent's affairs or incapable of caring for [himself or herself] the respondent and stating the reasons for the alleged incapability. The application shall be filed in the [court of probate] Court of Probate in the district in which the respondent resides, [or has his domicile] is domiciled or is located at the time of the filing of the application.

(b[TB2]) An application for appointment of a conservator for a non-domiciliary of the state made pursuant to subsection (a) of this section, shall not be granted unless the court finds (1) the respondent is presently located in the probate district in which the application is filed; (2) the petitioner has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the respondent has been provided with an opportunity to return to the respondent's place of domicile, including providing the financial means as available to the conserved individual to return to such individual's place of domicile and has declined to return or the petitioner has made reasonable but unsuccessful efforts to return the respondent or conserved individual to such respondent's or such individual's place of domicile; and (4) the requirements of this chapter for the appointment of an involuntary conservator are met.

(c) If, subsequent to the appointment of a conservator for a non-domiciliary of the state, the non-domiciliary becomes domiciled in this state, the provisions of this section no longer apply.

(d) Appointment of a conservator for a non-domiciliary made under subsection (b) of this section shall be reviewed by the court every sixty days. The appointment of such a conservator shall expire sixty days after the date of such appointment or the most recent review ordered by the court, whichever is later, unless the court finds (1) the conserved individual is presently located in the state; (2) the conservator has made reasonable efforts to notify or contact individuals and agencies listed in subsection (a) of section 45a-649, as amended, concerning the respondent; (3) the conserved individual has been provided with an opportunity to return to such individual's place of domicile and has declined to return or the conservator has made reasonable, but unsuccessful efforts, to return the conserved individual to such individual's place of domicile including providing the financial means as available to the conserved individual to return to such individual's place of domicile; and (4) all other requirements of this chapter for the appointment of an involuntary conservator are met. As part of its review, the court shall receive and consider reports from the conservator and from the attorney for the conserved individual regarding the requirements of this subsection.

(e) [Any person who] A person is guilty of fraudulent or malicious application or false testimony when such person wilfully files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator or any person who conspires with another person to file or cause to be filed such an application or any person who wilfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to [45a-662] 45a-663, inclusive.[, shall be fined not more than one thousand dollars or imprisoned not more than one year or both.] Fraudulent or malicious application or false testimony is a class D felony.

Sec. 14. Section 45a-649 of the general statutes **(Notice of hearing. [Appointment of attorney.])** is repealed and following is substituted in lieu thereof:

(a) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least [seven] ten days before the hearing date, or in the case of applications made pursuant to sections 17a-543 and 17a-543a at least seven days before the hearing[TB3], which date shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. Notice of the hearing shall be sent within thirty days after receipt of the application. (1) The court shall direct that personal service be made, by a state marshal, constable or an indifferent person, upon the following: [(A)] The respondent, [except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this section; (B)] the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin

of such respondent. (2) The court shall order such notice as it [directs] considers appropriate, including to the following: (A) The applicant; (B) the person in charge of welfare in the town where the respondent is domiciled or resident and if there is no such person, the first selectman or chief executive officer of the town if the respondent is receiving assistance from the town; (C) the Commissioner of Social Services, if the respondent is in a state-operated institution or receiving aid, care or assistance from the state; (D) the Commissioner of Veterans' Affairs if the respondent is receiving veterans' benefits or the Veterans' Home, or both, if the respondent is receiving aid or care from such home, or both; (E) the Commissioner of Administrative Services, if the respondent is receiving aid or care from the state; (F) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives; (G) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution. (3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified. (4) Failure to give notice to the respondent under the provisions of subdivision (1) of this subsection and of subsection (b) of this section shall deprive the court of jurisdiction to consider such application.

(b) [(1)] The notice required by subdivision (1) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, [and] (C) the time and place of the hearing and (D) that the respondent has a right to be present at the hearing and has a right to be represented by an attorney of the respondent's choice at [his or her own] the respondent's expense. The notice shall include a statement in at least twelve-point type that substantially conforms to the following:

"Possible consequences of the appointment of a conservator

This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted, you will lose some of your rights.

A permanent conservator can be appointed only after a court hearing. You have a right to attend the hearing. If you are not able to get to the court, the hearing can be moved to a convenient location, even to where you are residing.

You should get an attorney to represent you at the hearing. If you are unable to obtain an attorney to represent you, the court will appoint an attorney for you. If you are unable to afford the attorney, the court will pay attorney fees as allowed by court regulation. Even if you qualify for payment of an attorney, you may choose your own attorney if she or he will accept the fee rate approved by the state of Connecticut.

If, after a hearing, the court decides that you lack the ability to care for yourself or pay your own bills, the court may review any alternative plans you have to get assistance to handle your own affairs. If the court decides that there are no adequate alternatives, the court may appoint a conservator and assign the conservator some or all of the duties listed below. While the purpose of a conservator is to help you, you should be aware that appointment of a conservator limits your rights. Among the areas that may be affected are:

- Accessing your money
- Deciding where you live
- Making medial decisions
- Paying your bills
- Planning a budget
- Managing your property

You also have a right to participate in the selection of your conservator. If you have already designated a conservator or if you inform the court of your choice for a conservator, the court must honor your request. The court may refuse your request only if the court decides that the person designated by you is not appropriate.

The conservator appointed for you could be a lawyer, a public official or someone whom you did not know before the appointment. The conservator will be required to make regular reports to the court about you. The conservator may charge you a fee, supervised by the court, for being your conservator."

(c) The notice required by subdivision (2) of subsection (a) of this section shall state only that appointment of a conservator is being sought, the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

(d) If the respondent is unable to request or obtain [counsel] an attorney for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(e) If the respondent notifies the court in any manner that [he or she] the respondent wants to attend the hearing on the application but is unable to do so [because of physical incapacity], the court shall schedule the hearing on the application at a place [which] that would facilitate attendance by the respondent [but if not practical, then the judge shall visit the respondent, if he or she is in the state of Connecticut, before the hearing. Notice to all other persons required by this section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing].

Sec. 15. (NEW) (Section 45a-649a. Right to attorney.) (a) An individual subject to an application for involuntary representation or subject to proceedings subsequent to an appointment of an involuntary conservator shall have the right to be represented by an attorney of the individual's choice at the expense of the individual or, if the individual is indigent, within the payment guidelines of the Probate Court.

(b) If the court finds the respondent or conserved individual indigent or otherwise unable to pay for an attorney, the court shall appoint an attorney for the respondent or conserved individual unless the respondent refuses to be represented by an attorney and the court finds that the respondent or conserved individual understands the nature of the refusal. The court shall appoint an attorney from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations promulgated by the administrator under section 45a-77 of the general statutes.

(c) An attorney appointed pursuant to this section shall represent the respondent or conserved individual in proceedings under sections 45a-644 to section 45a-663, inclusive, of the general statutes, and shall consult with the conserved individual regarding bringing an appeal to the Superior Court under title 45a of the general statutes. If requested to do so by the conserved individual, the attorney shall assist in the filing and commencing of an appeal to the superior court. Assistance in filing an appeal shall not obligate the attorney to appear in or prosecute the appeal. A conservator may not deny the conserved individual access to the individual's resources needed for an appeal.

(d) Nothing shall impair, limit or diminish the right of a conserved individual or respondent to replace the attorney for such individual with another attorney whom such individual selects in accordance with the provisions of this section. Fees of an attorney chosen by the conserved individual shall be approved by the Probate Court or, if an appeal is taken, by the Superior Court.

(e) If the respondent or conserved individual is indigent, an attorney appointed under this section shall be paid a reasonable compensation. Rates of compensation for such appointed attorneys shall be established by the Office of the Probate Court Administrator. Such compensation shall be paid from funds appropriated to the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be paid from the Probate Court Administration Fund.

(f) An attorney representing an individual subject to proceedings under chapter 802h shall not accept appointment as guardian ad litem or conservator of the person or estate for the same individual, unless such attorney has been nominated by the respondent or conserved individual pursuant to section 45a-645, as amended, or similar instrument, including, but not limited to, a trust or an advance directive pursuant to section 19a-580e or 19a-580g, or is nominated by the respondent or conserved individual pursuant to section 45a-650, as amended.

(g) An attorney for the respondent or conserved individual, on presentation of proof of authority, shall have access to all information pertinent to proceedings under title 45a of the general statutes, including immediate access to medical records available to the respondent's treating physician.

Sec. 16. Section. 45a-650 of the general statutes (Hearing. [Medical information.] Evidence. Appointment of conservator. Limitation re powers and duties.) is repealed and the following is substituted in lieu thereof:

(a) At any hearing for involuntary representation, the court shall require clear and convincing evidence that (1) it has jurisdiction, (2) the respondent has been given notice as required by section 45a-648, as amended by this act, and (3) before receiving evidence regarding the condition of the respondent, the respondent is represented by an attorney or the respondent has waived the right to be represented by an attorney.

(b) The rules of evidence promulgated for the Superior Court shall[ddb4][ddb5] apply to proceedings pursuant to chapter 802h, part IV of the general statutes. Testimony at a hearing held pursuant to this section shall be given under oath or affirmation. The respondent has the right to attend any hearing held under this section.

(c) After making the findings required by subsection (a) of this section, the court shall receive evidence regarding the respondent's condition, the capacity of the respondent to care for one's self or manage the respondent's affairs, and the ability of the respondent to meet his or her needs without appointment of a conservator.[, including a written report or testimony by] Unless waived[TB6] by the court pursuant to this subsection, evidence shall be introduced from one or more physicians licensed to practice medicine in the state who have examined the respondent within [thirty] forty-five days preceding the hearing. The [report or testimony] evidence shall contain specific information regarding the [disability and the extent of its incapacitating effect] respondent's condition, and the effect of the condition on the respondent's ability to care for one's self or to manage the respondent's affairs. The court may also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, reports from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court [deems] considers qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is

shown that the evidence is impossible to obtain because of the absence of the respondent or [his or her] the respondent's refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the court shall make a specific finding in any decree issued on the [petition] application stating why medical evidence was not required. [In any matter in which the Commissioner of Social Services seeks the appointment of a conservator pursuant to chapter 319dd and represents to the court that an examination by an independent physician, psychologist or psychiatrist is necessary to determine whether the elderly person is capable of managing his or her personal or financial affairs, the court shall order such examination unless the court determines that such examination is not in the best interests of the elderly person. The court shall order such examination notwithstanding any medical report submitted to the court by the elderly person or the caretaker of such elderly person.] Any [medical report] hospital, psychiatric and medical record or report filed with the court pursuant to this subsection shall be confidential.

[(b)] (d) Upon the filing of an application for involuntary representation pursuant to section 45a-648, as amended, the court [may] shall issue an order for the disclosure of the medical information required pursuant to [subsection (a) of] this section, to the respondent's attorney and, upon request, to the respondent. The court may issue an order for the disclosure of such medical information to other individuals as the court determines necessary.

[(c)] (e) Notwithstanding the provisions of section 45a-7, the court may hold the hearing on the application at a place [within the state] other than its usual courtroom if it would facilitate attendance by the respondent.

[(d)] (f) If the court finds by clear and convincing evidence that the respondent is incapable of managing [his or her] the respondent's affairs and that the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in managing the respondent's affairs, the court [shall] may appoint a conservator of [his or her] the respondent's estate unless it appears to the court that such affairs are being managed [properly] adequately or can be managed adequately without the appointment of a conservator. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself and that appointment of a conservator is the least restrictive means of intervention available to assist the respondent in caring for himself or herself, the court [shall] may appoint a conservator of his or her person unless it appears to the court that the respondent is being cared for [properly] adequately or can be cared for adequately without the appointment of a conservator.

(g) The court shall assign to a conservator appointed under this section only those duties and authorities that are the least restrictive means of intervention necessary for the conserved individual. The court shall find by clear and convincing evidence that such duties and authorities shall restrict the decision-making authority of the conserved individual only to the extent necessary to provide for such personal needs or property management. Such needs and management shall be provided in a manner appropriate to the individual. The court shall make a finding of the clear and convincing evidence that supports the need for each duty and authority assigned to the conservator.

(h) Absent a court order to the contrary and except as otherwise provided in subsection (b) of section 19a-580e, a conservator appointed pursuant to this section shall be bound by all health care decisions properly made by the conserved individual's health care representative.

(i) A conserved individual retains all rights and authority not otherwise assigned to a conservator.

[(e)] (j) When determining whether a conservator should be appointed [and in selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. In making such determination, the court shall consider whether the respondent had previously made alternative arrangements for the care of his or her person or for the management of his or her affairs, including, but not limited to, the execution of a valid durable power of attorney, the appointment of a health-care agent or other similar document.] for the respondent, the court shall consider the following: (1) the abilities of the respondent, (2) the capacity of the respondent to understand and articulate an informed preference, (3) relevant and material information obtained from the respondent, (4) evidence of the respondent's past preferences and life style choices, (5) the respondent's cultural background, (6) the desirability of maintaining continuity in the respondent's life and environment, (7) whether the respondent has made adequate alternative arrangements for the care of his or her person or for the management of the individual's affairs, including, but not limited to, execution of a durable power of attorney, springing durable power of attorney, living will, trust or similar instrument or appointment of a health-care representative or health care agent, (8) any relevant and material evidence from the respondent's family or from a person regarding the respondent's past practices and preferences and (9) supportive services, technology or other means that are available to assist in meeting the respondent's needs. No conservator may be appointed if the respondent's personal needs and property management are being met adequately by an agency or individual appointed pursuant to section 1-43, 19a-575a, 19a-577, 19a-580e or 19a-580g of the general statutes.

(k) The respondent or conserved individual may[, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference,] appoint, designate or nominate a conservator pursuant to sections 19a-580e, 19a-580g or 45a-645 of the general statutes or may, orally or in writing, nominate a conservator who shall be appointed unless the court finds [the appointment of] that the appointee, designee or nominee is [not in the best interests of the respondent. In such case, or in the absence of any such nomination, the court] unwilling or unable to serve or there is substantial evidence to disqualify such person. If there is no such appointment, designation or nomination or if the court does not appoint the person appointed, designated or nominated by the respondent or conserved individual, the court may appoint any qualified person, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644. In considering whom to appoint as conservator under this subsection, the court shall consider (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved individual's preferences, (2) the ability of the proposed conservator to carry out the duties and authorities of the office, (3) the cost to the estate of the respondent or conserved individual, (4) the commitment of the

proposed conservator to promoting the respondent's or conserved individual's welfare and independence, and (5) any existing or potential conflicts of interest.

[(f) Upon the request of the respondent or his or her counsel, made within thirty days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

(g)] (l) If the court appoints a conservator of the estate of the respondent, it shall require a probate bond. The court may, if it [deems] considers it necessary for the protection of the respondent, require a bond of any conservator of the person appointed under this section.

(m) Nothing in this chapter shall impair, limit or diminish a conserved individual's right to retain an attorney to represent such individual or to seek redress of grievances in any court or administrative agency, including proceedings in the nature of habeas corpus arising out of any limitations imposed on the conserved individual by court action taken under this chapter, chapter 319i, chapter 319j or section 45a-242 of the general statutes. In any other proceeding in which the conservator has retained counsel for the conserved individual, the conserved individual may ask the Probate Court to direct the conservator to substitute an attorney chosen by the conserved individual.

[(h) The court may limit the powers and duties of either the conservator of the person or the conservator of the estate, to include some, but not all, of the powers and duties set forth in subsections (a) and (b) of section 45a-644 and sections 45a-655 and 45a-656, and shall make specific findings to justify such a limitation, in the best interests of the ward. In determining whether or not any such limitations should be imposed, the court shall consider the abilities of the ward, the prior appointment of any attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the ward, any support services which are otherwise available to the ward, and any other relevant evidence. The court may modify its decree upon any change in circumstances.]

Sec. 17. Section 45a-653 of the general statutes **(Contracts and funds of alleged incapable person pending application for appointment of conservator. Notice of application.)** is repealed and following is substituted in lieu thereof:

(a) If an application for the appointment of a conservator has been made, and if, while the application is pending, the applicant records a notice of the application certified by the court with the town clerk of any town within which real property of the alleged incapable person is situated and with the town clerk of the town in which the alleged incapable person resides, any conveyance of such real property by such person and any contract made by such person between the time the notice of the application is recorded and the time of the adjudication of the court upon the application shall not be valid without the approval of the court.

(b) If, during the pendency of the application, the applicant lodges with any bank, trust company or other depositary a notice of the application certified by the court, such bank, trust company or depositary shall not allow any funds of the alleged incapable

person to be withdrawn, between the time the notice of the application is lodged and the time of the adjudication of the court upon the application, without the approval of the court.

(c) The original of the notice of the application shall be filed with the court. [A] The notice [recorded or lodged pursuant to this section] may not be recorded or lodged elsewhere unless it is a copy certified by the court. The notice shall state that an application for appointment of a conservator is pending and shall include the name of the alleged incapable person, the name of the applicant, the probate district in which the application is pending, and the date of application. The notice shall be signed and acknowledged by the applicant. The notice shall not include the allegation of facts on which the application is based.

Sec. 18. Section 45a-654 of the general statutes **(Appointment of temporary conservator. Duties.)** is repealed and the following is substituted in lieu thereof:

(a) Upon written application for appointment of a temporary conservator brought by any person [deemed] considered by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence or domicile of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee, the court may appoint a temporary conservator if the court finds by clear and convincing evidence that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, [and] (2) immediate and irreparable [injury] harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed [pursuant to this section] and (3) appointment of a temporary conservator is the least restrictive means of intervention available to prevent such harm. The court [may, in its discretion,] shall require the temporary conservator to give a probate bond. The court shall limit the duties[, responsibilities] and [powers] authorities of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings [to justify such limitation] by clear and convincing evidence of the immediate and irreparable harm that must be prevented by appointment of a temporary conservator and that support appointment of a temporary conservator. In making such findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. The court shall set forth each duty and authority of the temporary conservator. The temporary conservator shall have charge of the property or of the person of the [respondent] conserved individual or both for such period [of time] or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650. The court may (A) extend the appointment of the temporary

conservator until the disposition of such application under section 45a-650, or for an additional thirty days, whichever occurs first, or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist. A temporary conservator shall have charge of the property or of the person of the conserved individual for not more than sixty days from the date of the initial appointment.

(b) [Except as provided in] Unless the requirement of a report by a physician under this subsection is waived by the court pursuant to subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is [presented to the judge] filed with the application, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court [may issue an order] shall provide for the disclosure of the medical information required pursuant to this subsection to the respondent's attorney, to the respondent on the respondent's request and to any other party considered appropriate by the court..

(c) On receipt of the application for the appointment of a temporary conservator, the court shall issue notice to the respondent, appoint counsel and conduct a hearing on the application in the manner pursuant to sections 45a-649 to 45a-650, inclusive[TB7], of the general statutes, as amended, except that (1) notice to the respondent shall be given not less than five days before the hearing, which shall be conducted not later than seven days after the application is filed, excluding Saturdays, Sundays, and holidays or (2) notice to the respondent, where an application has been made ex parte for a temporary conservator, shall be given not more than forty-eight hours after the ex parte appointment of a temporary conservator, with the hearing on such ex parte appointment being conducted not later than three days after the ex parte appointment, excluding Saturdays, Sundays and holidays. Service on the respondent of the notice of the application for the appointment of a temporary conservator shall be in hand and shall be made by a state marshal, constable or an indifferent person. Notice shall include (A) a copy of the application for appointment of temporary conservator and accompanying physician's report, (B) a copy of an ex parte decree, if any, appointing a temporary conservator, and (C) the date, place and time of the hearing on the application for the appointment of a temporary conservator. After hearing and on making the findings required in this section, the court may appoint a temporary conservator. If notice is provided to the next of kin under this section, such report of the physician shall not be disclosed to the next of kin except by order of the court.

(d)(1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection [(d)] (c) of this section would cause immediate and irreparable injury to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon receiving the evidence and making the findings required in subsection (a) of this section, provided the court

makes a specific finding in any decree issued on the application stating the immediate or irreparable [injury] harm that formed the basis for the court's determination and why such hearing and appointment was not required before issuance of the ex parte order of appointment. If an ex parte order of appointment of a conservator is made, a hearing on the application for appointment of a temporary conservator shall be commenced not later than three days, excluding Saturdays, Sundays and holidays, after the ex parte order was issued. An ex parte order shall expire not later than three days after the order was issued, unless a hearing on the order commenced before expiration of the three-day period has been continued for good cause.

[(2[TB8]) After making such ex parte appointment, the court shall immediately: (A) Appoint an attorney to represent the respondent, provided if the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund; (B) schedule the date, place and time of a hearing to be held not later than seventy-two hours after the issuance of the court's decree, excluding Saturdays, Sundays and holidays; and (C) give notice by [mail, or such other notice as the court deems appropriate, on the respondent, the respondent's next of kin and such attorney, which notice shall include: (i) A copy of the application for appointment of temporary conservator and the accompanying physician's report; (ii) a copy of the decree appointing a temporary conservator; and (iii) the date, place and time of the hearing scheduled pursuant to subparagraph (B) of this subdivision, except that if the court determines that notice to the respondent under this subdivision would be detrimental to the health or welfare of the respondent, the court may give such notice only to the respondent's next of kin and the respondent's attorney.]

[(3)](2) After [such] a hearing held under this section, the court [shall] may appoint a temporary conservator, or confirm or revoke the appointment of the ex parte temporary conservator, if any, or may modify the duties[, responsibilities or powers] and authorities assigned under such appointment.

[(d) If the court determines that an ex parte appointment of a temporary conservator pursuant to subsection (c) of this section is not appropriate but finds substantial evidence that appointment of a temporary conservator may be necessary, the court shall hold a hearing on the application. Unless continued by the court for cause, such hearing shall be held not later than seventy-two hours after receipt of the application, excluding Saturdays, Sundays and holidays. Prior to such hearing, the court shall appoint an attorney to represent the respondent in accordance with subsection (c) of this section and shall give such notice as it deems appropriate to the respondent, the respondent's next of kin and such attorney, which notice shall include a copy of the application for appointment of a temporary conservator and the accompanying physician's report. After hearing and upon making the findings required in subsection (a) of this section, the court may appoint a temporary conservator.]

(e) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court may not appoint a temporary conservator unless it has been shown by clear and convincing evidence that (1) the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall [(1)] make a specific finding in any decree issued on the application stating why medical evidence was not required[, and (2) schedule a hearing in accordance with subsection (c) or (d) of this section, which hearing shall take place not later than seventy-two hours after the issuance of the court's decree].

[(f) Except as provided in subsection (g) of this section, a temporary conservator may not change the respondent's residence unless a court specifically finds, after a hearing, that such change is necessary.

(g) (1) If the temporary conservator determines it is necessary to cause the respondent to be placed in an institution for long-term care, the temporary conservator may make such placement after the temporary conservator files a report of such intended placement with the probate court that appointed the temporary conservator, except that if the placement results from the respondent's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the respondent would result from filing the report before making such placement, the temporary conservator shall make the placement before filing the report provided the temporary conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the temporary conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the respondent's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The temporary conservator shall give notice of the placement and a copy of such report to the respondent and any other interested parties as determined by the court.

(3) Upon the request of the respondent or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing,

determines that the respondent's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the respondent, either through the respondent's own estate or through private or public assistance, the court shall order that the respondent be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

[(h)](f) Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report and final accounting, if applicable and as directed by the court, with the court of [his or her] such conservator's actions as temporary conservator.

Sec. 19. Section 45a-655 of the general statutes **(Duties of conservator of the estate. Application for distribution of gifts of income and principal from the estate.)** is repealed and the following is substituted in lieu thereof:

(a) A conservator of the estate appointed under section 45a-646, 45a-650 or 45a-654 shall, within two months after the date of [his or her] the conservator's appointment, make and file in the Court of Probate, an inventory under penalty of false statement of [his or her ward] the estate of the conserved individual, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of [his or her] the conservator's appointment. Such inventory shall include the value of the [ward's] conserved individual's interest in all property in which the [ward] such individual has a legal or equitable present interest, including, but not limited to, the [ward's] the conserved individual's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the [ward] conserved individual and those members of the [ward's] conserved individual's family whom [he or she] the conserved individual has the legal duty to support and to pay the [ward's] debts, and may sue for and collect all debts due the [ward] conserved individual The conservator shall use the least restrictive means of intervention in the exercise of its duties and authorities.

(b) Any conservator of the estate of a married person may apply such portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse which the Court of Probate, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45a-177, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under section 45a-649.

(d) In the case of any person receiving public assistance, state-administered general assistance or Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by

the Commissioner of Social Services. Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the [ward] conserved individual to the support of the [ward's] conserved individual's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services pursuant to 42 USC 1396r-5(d)(2)-(4), or (2) any portion of the property of the [ward] conserved individual to the support, maintenance and medical treatment of the [ward's] conserved individual's spouse in an amount that exceeds the amount determined allowable by the department pursuant to 42 USC 1396r-5(f)(1) and (2), notwithstanding the provisions of 42 USC 1396r-5(f)(2)(A)(iv), unless such limitations on income would result in significant financial duress.

(e) Upon application of a conservator of the estate, after hearing with notice to the Commissioner of Administrative Services, the Commissioner of Social Services and to all parties who may have an interest as determined by the court, the court may authorize the conservator to make gifts or other transfers of income and principal from the estate of the [ward] conserved individual in such amounts and in such form, outright or in trust, whether to an existing trust or a court-approved trust created by the conservator, as the court orders to or for the benefit of individuals, including the [ward] conserved individual, and to or for the benefit of charities, trusts or other institutions described in Sections 2055(a) and 2522(a) of the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts or transfers shall be authorized only if the court finds that: (1) In the case of individuals not related to the [ward] conserved individual by blood or marriage, the [ward] conserved individual had made a previous gift to that unrelated individual prior to being declared incapable; (2) in the case of a charity, either (A) the [ward] conserved individual had made a previous gift to such charity, had pledged a gift in writing to such charity, or had otherwise demonstrated support for such charity prior to being declared incapable; or (B) the court determines that the gift to the charity is in the best interests of the [ward] conserved individual, is consistent with proper estate planning, and there is no reasonable objection by a party having an interest in the [ward's] conserved individual's estate as determined by the court; (3) the estate of the [ward] conserved individual and any proposed trust of which the [ward] conserved individual is a beneficiary is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such [ward] conserved individual in accordance with such [ward's] conserved individual's established standard of living and for the support of persons the [ward] conserved individual is legally obligated to support; (4) the purpose of the gifts is not to diminish the estate of the [ward] conserved individual so as to qualify the [ward] conserved individual for federal or state aid or benefits; and (5) in the case of a [ward] conserved individual capable of making an informed decision, the [ward] conserved individual has no objection to such gift. The court shall give consideration to the following: (A) The medical condition of the [ward] conserved individual, including the prospect of restoration to capacity; (B) the size of the [ward's] conserved individual's estate; (C) the provisions which, in the judgment of the court, such [ward] conserved individual would have made if [he or she] conserved individual

had been capable, for minimization of income and estate taxes consistent with proper estate planning; and (D) in the case of a trust, whether the trust should be revocable or irrevocable, existing or created by the conservator and court approved. The court should also consider the provisions of an existing estate plan, if any. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by the conservator shall be subject to continuing probate court jurisdiction in the same manner as a testamentary trust including periodic rendering of accounts pursuant to section 45a-177. Notwithstanding any other provision of this section, the court may authorize the creation and funding of a trust that complies with section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. The provisions of this subsection shall not be construed to validate or invalidate any gifts made by a conservator of the estate prior to October 1, 1998.

Sec. 20. Section 45a-656 of the general statutes **(Duties and authorities of conservator of the person)** is repealed and the following is substituted in lieu thereof:

(a) The conservator of the person shall have only those authorities and duties expressly assigned pursuant to section 45a-650 of the general statutes and may have: (1) The duty and responsibility for the general custody of the [respondent] conserved individual; (2) the [power] authority to establish [his or her] the conserved individual's [place of abode] residence within the state, subject to the provisions of section 45a-656a of this act; (3) the [power] authority to give consent for [his or her] such individual's medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the [ward] conserved individual; and (5) the duty to take reasonable care of the [respondent's'] personal effects of such individual.[; and (6) the duty to]

(b) In carrying out the authorities and duties assigned by the Probate Court, the conservator of the person shall exercise such authorities and duties in a manner that is the least restrictive means of intervention and shall (1) assist the conserved individual in removing obstacles to independence, (2) assist the such individual in achieving self-reliance, (3) ascertain the conserved individual's views, (4) make decisions in conformance with the conserved individual's reasonable and informed expressed preferences, (5) make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved individual, and (6) make decisions in conformance with such individual's expressed health care preferences, including health care instructions and other wishes authorized in sections 19a-580e, unless otherwise provided in subsection (b) of section 19a-580e and section 19a-580g of the general statutes. The conservator shall afford the conserved individual the opportunity to participate meaningfully in decision-making in accordance with the conserved individual's abilities and shall delegate to the conserved individual reasonable responsibility for decisions affecting such individual's well-being..

(c) The conservator shall report at least annually to the [probate court which] Probate Court that appointed the conservator regarding the condition of the [respondent] conserved individual, the efforts made to encourage independence and whether appointment of a conservator is the least restrictive means of intervention for managing the conserved individual's needs. The [preceding] duties, responsibilities and [powers]

authorities under this section shall be carried out within the [limitations of the] resources available to the [ward] conserved individual, either through [the ward's] the individual's own estate or through private or public assistance.

[(b)](d) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill except under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 359.

[(c) (1) If the conservator of the person determines it is necessary to cause the ward to be placed in an institution for long-term care, the conservator may make such placement after the conservator files a report of such intended placement with the probate court that appointed the conservator, except that if the placement results from the ward's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the ward would result from filing the report before making such placement, the conservator shall make the placement before filing the report provided the conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the ward's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement and a copy of such report to the ward and any other interested parties as determined by the court.

(3) Upon the request of the ward or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the ward's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the ward, either through the ward's own estate or through private or public assistance, the court shall order that the ward be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.]

Sec. 21. (NEW) (Section 45a-656a. Restriction on placement of conserved individual in institution for long-term care.) (a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a conservator may not terminate a tenancy or lease of the conserved individual, sell or dispose of any real property or household furnishings of the conserved individual, or change the individual's residence unless a court finds, after a hearing, that such change is necessary or that the conserved individual agrees to such action.

(b) If the conservator determines it is necessary to cause the conserved individual to be placed in an institution for long-term care or to change the conserved individual's residence, the conservator shall file a report of the intended placement in long-term care with the Probate Court that appointed the conservator. The court shall hold a hearing to consider the report. If, after the hearing, the conservator obtains permission of the court, the conservator may make such a placement. The hearing shall be held not less than five days after the filing of the report, excluding Saturdays, Sundays and holidays, and not less than seventy-two hours before the placement in the institution for long-term care, except that if the placement results from the respondent's discharge from a hospital, the conservator may make the placement before filing the report provided the conservator (1) files the report not later than forty-eight hours, excluding Saturdays, Sundays and holidays, after making such placement, and (2) includes in the report a statement as to the hospital discharge and related circumstances requiring the placement of the conserved individual in the institution for long-term care. No such placement made before the filing of the report of the conservator shall continue unless ordered by the Probate Court after a hearing held pursuant to this section.

(c) The report filed under subsection (b) of this section shall set forth the basis for the conservator's determination, what community resources are available and have been considered to avoid the placement, and the reasons why the conserved individual's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement of the conserved individual in an institution for long-term care and a copy of such report to the conserved individual, the conserved individual's attorney, and any interested parties as determined by the court. Service shall be by first-class mail, postage pre-paid. The conservator shall provide a certification to the court that service was made in the manner prescribed by this subsection.

(d) The conserved individual may, at any time, request a hearing by the court on the individual's placement in an institution for long-term care, including the availability of a less restrictive alternative for the individual's placement. On ~~written~~ request[TB9] of the conserved individual made after the initial hearing held under subsection (b), the court shall hold a hearing on the placement not later than ten days, excluding Saturdays, Sundays, and holidays, after receipt by the court of such request. The court is not required

to conduct a hearing more than three times in any twelve-month period following the hearing held under subsection (b) authorizing the initial placement, except that the court shall conduct a hearing whenever information not previously available to the court is submitted with a request for a hearing. **(Does this exception swallow the rule? Can't an individual always claim that a placement, because of the passage of time etc., is no longer appropriate? If so, wouldn't this be new "information not previously available"? DB)**

(e) After the initial hearing held under subsection (b), the court may hold a hearing on a conservator's report and the placement of the conserved individual in an institution for long-term care in any case even if no request for a hearing is made.

(f) If the court, after a hearing on the placement of the conserved individual in an institution for long-term care, determines that the conserved individual's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the resources available to the conserved individual, either through the conserved individual's own estate or through private or public assistance, the court shall order that the conserved individual be placed and maintained in a less restrictive and more integrated setting.

(g) A conserved individual may waive the right to a hearing required under this section only after the individual's attorney has consulted with the individual and the attorney files with the court a record of the waiver. Such a waiver must represent the individual's own wishes.

(h) For purposes of this section, an "institution for long-term care" means a facility that has been federally-certified as a skilled nursing facility, an intermediate care facility, a residential care home, an extended care facility, a nursing home, a rest home and a rehabilitation hospital or facility.

Sec. 22. Section 45a-659 of the general statutes **(Conservator of nonresident's property.)** is repealed and the following is substituted in lieu thereof:

(a) If any [person] <u>individual not</u> domiciled [out of] <u>in this state,</u> and owning real property or tangible personal property in this state is incapable of managing his or her affairs, the [court of probate] <u>Court of Probate</u> for the district in which the property or some part of it is situated may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person in the state where the incapable person is domiciled and after notice pursuant to section 45a-649 or such reasonable notice as the court may order, and a hearing as required pursuant to section 45a-650 appoint a conservator of the estate for the real property and tangible personal property in this state of the incapable person pursuant to section 45a-650.

(b) If a conservator of the estate has been appointed for such an incapable person in the state of such person's domicile, (1) the court may, on application of the out-of-state conservator to act as conservator for real or tangible personal property of the incapable

person in this state, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the state of the incapable person's domicile, and (2) if the application is for the appointment of a person other than the out-of-state conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-state appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in an out-of-state jurisdiction includes any person serving in the equivalent capacity in such state.

(c) The conservator of the estate for the property in this state shall give a probate bond, and shall, within two months after the date of his or her appointment, make and file in the court of probate, under penalty of false statement, an inventory of all the real property and tangible personal property in this state of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

(d) The proceeds of any sale of [either] the real or tangible personal property, or [both] the tangible personal property, itself, may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the state where the incapable person is domiciled, following the application and proceedings which are required by section 45a-635.

(e) If an application for a conservator is made pursuant to this section, the Probate Court may not proceed to act on the application until an attorney is appointed to represent the individual. An attorney shall be appointed in the manner provided in section 15 of this act.

Sec. 23. Section 45a-660 of the general statutes **(Termination of conservatorship. Review by court.)** is repealed and the following is substituted in lieu thereof:[TB10]

(a)(1) A conserved individual may, at any time, petition the Court of Probate having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved individual shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Probate Court, unless the hearing is continued for good cause. If such hearing is not held in such thirty-day period, the conservatorship shall terminate. If the [court of probate] Court of Probate having jurisdiction finds a [ward] conserved individual to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of [his or her] the conserved individual's property be restored to the [ward] conserved individual. (2) If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved individual has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets

to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the [ward] conserved individual, upon such conservator or person giving such probate bond, if any, as the court orders. (3) If any [ward] conserved individual having a conservator dies, [his or her] the conserved individual's property other than property which has accrued from the sale of [his or her] such individual's real property shall be delivered to [his or her] the conserved individual's executor or administrator. The unexpended proceeds of [his or her] the conserved individual's real property sold as aforesaid shall go into the hands of the executor or administrator, to be distributed as such real property would have been.

(b) (1) In any case under subsection (a) of this section the conservator shall file in the court [his or her] the conservator's final account, and the court shall audit the account and allow the account if it is found to be correct. If the [ward] conserved individual is living, the [ward] individual and [his or her] the individual's attorney, if any, shall be entitled to notice by regular mail of any hearing held on the final account. (2) The [court of probate] Court of Probate having jurisdiction shall send written notice annually to the [ward] conserved individual and [his or her] the individual's attorney that the [ward] conserved individual has a right to a hearing under this section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than thirty days from the receipt of the [application] request unless continued for cause shown.

(c) The court shall review each conservatorship [at least every three years and] no later than one year after the conservatorship was ordered and no less than every three years after such initial review. After such a review, the court shall continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the [ward] conserved individual. The conservator and a physician licensed to practice medicine in this state shall each submit a written report to the court within forty-five days of the court's request for such report. On receipt of a written report, the court shall provide a copy to the conserved individual and attorney for the conserved individual. If the [ward] conserved individual is unable to request or obtain an attorney, the court shall appoint an attorney. If the [ward] conserved individual is unable to pay for the services of the attorney, the rates of reasonable compensation of such attorney shall be established by, and the attorney shall be paid from funds appropriated to, the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such rates of compensation shall be established by the Probate Court Administrator and the attorney shall be paid from the Probate Court Administration Fund. The physician shall examine the [ward] conserved individual within the forty-five-day period preceding the date of submission of the physician's report. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court may issue an order for the disclosure of medical information required pursuant to this subsection but shall issue such an order of disclosure for the conserved individual's attorney. No later than thirty days after receipt of the conservator's report and physician's evaluation, the attorney for the conserved individual shall notify the court that the attorney has met with the conserved individual and shall inform the court whether a hearing is being requested. Nothing in this section

shall prevent the conserved individual or the individual's attorney from requesting a hearing at any other time as allowed by law.

(d) If the court [determines] finds, after receipt of the reports from the attorney for the [ward] conserved individual, the physician and the conservator, [that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician] by clear and convincing evidence, that the conserved individual continues to be incapable of managing the conserved individual's affairs and that there are no less restrictive means available to assist the conserved individual in managing the individual's affairs, the court shall continue or modify the conservatorship under the terms and conditions of appointment of a conservator under section 45a-650, as amended by this act. If the court does not make such a finding of continuing incapacity by clear and convincing evidence, the court shall terminate the conservatorship. A hearing on the condition of the conserved individual shall not be required, but the court, in its discretion, may hold such hearing. If the conserved individual, attorney or conservator requests a hearing, the court shall hold a hearing within thirty days of such request.

Sec. 24. Section 45a-662 of the general statutes **(Conveyance of property by order of court.)** of the general statutes is repealed and the following is substituted in lieu thereof:

The [court of probate] Court of Probate in which [the] a conservator [of any incapable person] has been appointed may, concurrently with courts of equity, order such conservator to convey the interest of [his ward] the conserved individual in any real property which ought in equity to be conveyed to another person.

Sec 25. Section 45a-679 of the general statutes **(Conflicts between plenary guardian, limited guardian, conservator of the estate or person and temporary conservator to be resolved by Probate Court.)** is repealed and the following is substituted in lieu thereof:

If a ward or conserved individual has both a plenary guardian or limited guardian of the person with mental retardation and a conservator of the estate or person or a temporary conservator who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the court of probate making the appointment of such guardian or conservator and such court shall, after a hearing, order the course of action which in its discretion is in the best interest of the ward or conserved individual.

Sec. 26. (NEW) (Section 45a-701. Application for writ of habeas corpus.) (a) An individual subject to guardianship or involuntary conservatorship under chapter 802h may apply for and is entitled to the benefit of the writ of habeas corpus without having previously exhausted other available remedies including, but not limited to, the right to appeal the order of guardianship or involuntary conservatorship. The question of the

legality of such guardianship or involuntary conservatorship shall be determined by the court or judge issuing such writ.

(b) A writ of habeas corpus shall be directed to the guardian of the person or the estate of the ward or to the conservator of the conserved individual and if illegality or invalidity of the guardianship or involuntary conservatorship is alleged in such writ, a copy shall also be directed to the judge of the court that issued the order as to such claim.

(c) An application for a writ of habeas corpus under this section shall be brought to either the Superior Court or the Court of Probate.

(d) If such application has been brought in the Court of Probate, the Probate Court Administrator shall appoint a three-judge court from among the several judges of probate to hear such application. Such three-judge court shall consist of judges who are attorneys-at-law admitted to practice in this state. The judge of the Court of Probate who issued the order shall not be a member of the three-judge court. No such application shall be denied without the vote of at least two judges of the three-judge court. The judges of such court shall designate a chief judge from among their members. The three-judge court shall cause a recording to be made of all proceeding held under this section. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator. All records for any case before the three-judge court shall be maintained in the Probate Court in which the conservator or guardian was appointed.

(e) Hearing under this section shall be heard not later than ten days, excluding Saturdays, Sundays and holidays, after return of service of the writ.

(f) If the court or judge before whom such a writ is brought decides that the involuntary representation or guardianship is not illegal, such decision shall be considered a final judgment and subject to appeal.

(g) If the court or judge before whom such case is brought decides that the involuntary representation or guardianship is not illegal, such decision shall not bar issuance of such a writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was conserved or if such application is based on a ground different from that relied on in an earlier application. Such writ may be applied for by an individual subject to guardianship or involuntary conservatorship or on the behalf of such individual by any relative, friend or person interested in such individual's welfare.

(h) An appeal to the Superior Court of a decision rendered by a three-judge court under this section shall be filed in the judicial district in which the Probate Court that issued the order appointing a guardian or involuntary conservator is located. Such appeal shall be heard not later than thirty days of the return of service of the appeal.

Sec. 27. Section 45a-663 of the general statutes **(Compensation of conservator if [ward] <u>conserved individual</u> unable to pay.)** is repealed and the following is substituted in lieu thereof:

If a [ward] conserved individual is unable to pay for the services of a conservator appointed pursuant to the provisions of sections 45a-593 to 45a-700, inclusive, the reasonable compensation of such conservator shall be paid from the Probate Court Administration Fund established under section 45a-82, pursuant to rules and regulations and at rates established by the Probate Court Administrator.

Sec. 28. (NEW) (Sec. 17a-716. Writ of habeas corpus.) An individual confined in a hospital or inpatient treatment facility for treatment of alcohol or drug dependency in this state may seek a writ of habeas corpus in the Superior Court. The question of the legality of such confinement shall be determined by the court or judge issuing such writ. The writ shall be directed to the superintendent or director of the hospital or treatment facility and, if illegality or invalidity of the commitment is alleged in such writ, a copy shall also be directed to the judge of the committing court as to such claim. Such judge shall be represented by the state's attorney for the judicial district in which such committing court is located. If the court or judge before whom such case is brought decides that the confinement is not illegal, such decision shall not bar issuance of such writ again, provided that it is claimed that such individual is no longer subject to the condition for which the individual was confined. Such writ may be sought by the confined individual or on behalf of the individual by any relative, friend or person interested in the individual's welfare. Court fees may not be charged against the superintendent or director of the hospital or the judge.

Sec. 29. Section 49-11 of the general statutes **(Release of mortgage by executor, administrator, spouse, next of kin, guardian, conservator or other suitable person.)** is repealed and the following is substituted in lieu thereof:

The executor of the will or administrator of the estate of any deceased mortgagee, or the spouse or next of kin, or other suitable person whom the court [deems] considers to have a sufficient interest, to whom a decree is issued under section 45a-273, and any guardian [or conservator] whose ward or conservator whose or conserved individual as defined in section 45a-644, as amended, is a mortgagee, may, on the payment, satisfaction or sale of the mortgage debt, release the legal title to the party entitled thereto.

Sec. 30. Section 12-45 of the general statutes **(Return to assessors of personalty in trust.)** is repealed and the following is substituted in lieu thereof:

Each sole trustee residing in this state, having in his hands personal property liable to taxation belonging to the trust estate, shall make return thereof to the assessors of the town where he resides. If such personal property is in the hands of more than one trustee, if they all reside in the same town, they shall cause such return to be made by one of their number in such town; if they do not all reside in the same town, they shall cause such return to be made by one of their number, residing in the town in which the affairs of such trust are managed and administered, to the assessors of such town; but, if none of such trustees resides in such town, they shall designate one of their number who shall make such return to the assessors of the town where he resides. Each guardian or conservator shall make return of the personal estate of [his] the guardian's ward or the

conservator's conserved individual to the assessors of the town in which such ward or conserved individual resides.

Sec. 31 Section 19a-580e of the general statutes **(Conservator's duty to comply with [ward's] conserved individual's health care instructions. Precedence of health care representative's decisions. Exceptions.)** is repealed and the following is substituted in lieu thereof:

(a) Except as authorized by a court of competent jurisdiction, a conservator shall comply with a [ward's] conserved individual's individual health care instructions and other wishes, if any, expressed while the [ward] conserved individual had capacity and to the extent known to the conservator, and the conservator may not revoke the [ward's] conserved individual's advance health care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health care decision of a health care representative takes precedence over that of a conservator, except under the following circumstances: (1) When the health care decision concerns a person who is subject to the provisions of section 17a-566, 17a-587, 17a-588 or 54-56d; (2) when a conservator has been appointed to a [ward] conserved individual who is subject to an order authorized under subsection (e) of section 17a-543, for the duration of the [ward's] conserved individual's hospitalization; or (3) when a conservator has been appointed to a [ward] conserved individual subject to an order authorized under section 17a-543a.

Sec. 32. Sections 45a-191 **(Interest of appellant to be stated.)** and 45a-192 **(Order of notice.)** of the general statutes are repealed.

Sec. 33. This act shall take effect on October 1, 2007.

ADVOCACY UNLIMITED, INC. 300 Russell Road Wethersfield, CT 06109

(860) 667-0460 • (800) 573-6929 (in Connecticut only) • FACSIMILE: (860) 667-2240

Testimony
Judiciary Committee Public Hearing
Melissa Marshall, Executive Director
Advocacy Unlimited
March 30, 2007

Good afternoon Senator MacDonald, Representative Lawlor and members of the Judiciary Committee. My name is Melissa Marshall and I am the Executive Director of Advocacy Unlimited (AU). Advocacy Unlimited empowers people with psychiatric disabilities by providing training in self, systems and legislative advocacy. I am here today to testify on two bills; **House Bill 5675 AAC THE DURATION OF PSYCHIATRIC EVALUATIONS** and **Raised Bill 1439 AAC CONSERVATORS AND PROBATE APPEALS.**

I am testifying against **House Bill 5675**. This bill extends the amount of time that commitment can be extended under a Physician's Emergency Certificate from 15 to 30 days. Doing so would constitute a massive deprivation of rights, without adequate due process. This enormous disruption would have a huge negative impact on individuals' recovery.

Through the Department of Mental Health and Addiction Services (DMHAS), Connecticut has adopted a recovery oriented philosophy. The proposed legislation flies in the face of recovery centered values. Don't make Connecticut's mental health legislation regressive. On behalf of AU, I urge the Committee not to favorably consider this bill.

I am testifying in favor of **Raised Bill 1439 AAC CONSERVATORS AND PROBATE APPEALS** with substitute language proposed by the Conservator Revision Committee, chaired by Judge Robert Killian. The language of the Committee elaborates on changes to the statute proposed in **House Bill 1439**.

The present conservatorship statutes are archaic and need the substantial revisions that have been suggested. The proposed language will finally bring the state of Connecticut into alignment with principles articulated by the President's New Freedom Commission and mandated by the Americans with Disabilities Act (ADA) through the *Olmstead* decision.

The language proposed by the Committee requires that a conservator is appointed only when it is the least restrictive means available and insures the highest due process safeguards. The Committee's recommendations are not a deviation from the norm, rather they are based on national model statutes, including the *Uniform Guardianship and Protective Procedures Act* (1997) and the *Model Probate Code* (most recently amended

2006). In recent years states have been adopting many, if not all of the provisions in these model statutes.

It is time for Connecticut to bring its conservatorship statutes into the 21st century. Elderly residents and residents that have or could acquire disabilities-potentially all of us-deserve it.

Thank you for your consideration. I'll be happy to answer any questions.

005877

WRITTEN STATEMENT

Of

THE HONORABLE RUSSELL A. KIMES, JR.

PROBATE JUDGE, DISTRICT OF NEW CANAAN

TO

JOINT COMMITTEE ON JUDICIARY

PUBLIC HEARING

MARCH 30, 2007

Senator MacDonald, Representative Lawlor and distinguished members of the Judiciary Committee.

I am unable to attend the March 30th Public Hearing due to a previous travel commitment to attend the National College of Probate Judges Conference in Virginia on April 1-3, 2007. Please accept my sincere regrets for not personally delivering these thoughts.

I am writing in support of bills 6821 and 1439 and in opposition to bills 1272 and 1453.

Of all the matters on today's agenda, there are three that must be addressed:

Program Review Committee Recommendations - Proposed Bill 6821

By far the most important legislative proposal is Proposed Bill 6821, AAC Adopting Certain Recommendations of the Legislative Program Review and Investigations Committee concerning the Connecticut Probate Court System. And yet, your committee has totally ignored it.

Two years ago the Program Review Committee undertook an in-depth review of the probate court system. That committee adopted its final report on January 19, 2006. A bill [5391] was introduced that embodied the recommendations of the committee. That bill was referred to the Judiciary Committee on March 9, 2006. It appeared as bill number 58 [the last item] on the committee agenda on the last day to JF bills, March 27, 2006. It never left your committee.

Now it is a year later and you are 2 weeks away from this years' JF deadline and the Program Review Committee bill has not even been drafted. To its credit, the Probate Assembly has in good faith pressed ahead with all of the Program Review recommendations that directly involved the Probate Assembly. The Probate Court Administrator, on the other hand, has generally **ignored** the recommendations and offered his own legislation that would make him more powerful and less accountable.

With two weeks remaining it is clear that any rush drafting and passage without any public input would be worse than waiting another year. But in the future, **your committee must take a leadership role to see that these recommendations are adopted. Your committee is totally responsible for this failure.**

Increasing the Probate Court Administrator's Powers - Proposed Bill 1272

Anyone familiar with the current Probate Court Administrator, James J. Lawlor, knows that he has totally politicized his office and Connecticut's probate courts and continues to ignore statutory direction whenever it suits his agenda. Ask any member of the General Assembly, many of whom attended the Administrator's "celebrations" in Phoenix, Arizona, Philadelphia, Pennsylvania, New Haven, Meriden, or New London, and they will tell you Administrator Lawlor is nothing if he is not a political animal.

Administrator Lawlor's Proposed Bill 1272 AAC Administration of the Courts of Probate and the Duties of the Probate Court Administrator, is, in a word, **unconstitutional**. In 1967, the Connecticut Supreme Court held in the case of *Adams v. Rubinow*[1], that the Legislature cannot delegate its responsibilities to an appointed bureaucrat in the Judicial Department. Now, 40 years later, the Administrator is trying to do it again.

Just a few examples of the unconstitutional provisions in this bill:

1. Eliminate any accountability to the General Assembly by removing the requirement that the Administrator comply with the Administrative Procedures Act.
2. Give the Administrator the power to appoint non-judges to hear cases in place of duly elected judges.
3. Give the Administrator the power to determine judges' compensation.
4. Remove the requirement that the Administrator report inadequate court facilities to the General Assembly and give the Administrator the power to punish judges if a town fails to provide appropriate court facilities.
5. Give the Administrator the power to micro-manage all 117 local probate courts
6. Give the Administrator the power to force a court to open even when the town hall is closed.
7. Give the Administrator the power to force the reassignment or transfer of cases from an errant judge.

The Administrator does not need any more power. The anecdotal examples he cites as justification for a need to expand his power are, without exception, adequately addressed in current statutes. The Administrator clearly does not want to be accountable to anyone but himself.

This proposed bill is **bad legislation and unconstitutional**. It should be killed.

Conservator Legislation – Proposed Bill 1439 and Proposed Bill 1453

There are two bills that address the rights of those people who are unfortunately incapable of managing their own affairs.

As a direct result of the efforts of the elder law unit of the Greater Hartford Legal Aid, the Connecticut Legal Rights Project Inc. in Middletown and the continual barrage of opinion columns and editorial comment by the *Hartford Courant*, much attention has been given to the elderly and otherwise infirm for whom probate courts have appointed conservators.

Legislation enacted in 2005, currently requires the probate courts limit the powers of temporary conservators to "protect the rights" of those who are incapable of caring for themselves.

This year there are two proposals that address the involuntary appointment of permanent conservators:

S.B. No. 1439, AAC Conservators and Probate Appeals:

This bill contains provisions that are intended to assure:

1. that the ward receives notice of the proceedings;
2. that the ward has competent legal counsel;
3. that evidence is presented to prove actual notice and jurisdiction;
4. that an audio recording of the proceedings be permanently preserved; and
5. that the appointment of a conservator is the "least restrictive form of intervention" (whatever that means)

The bill also extends the time to take an appeal to Superior Court from 30 to 60 days for ALL probate matters and requires that any Supreme Court hearing be held on the record (preserved in #4 above).

In support of this proposed bill, there may well be a need for minor modification of the existing statutes to tighten up the notice requirements and provide for the production of an audio record of the proceedings that can serve as a record on appeal, but the wisdom of extending the 30 appeal period is questioned.

S.B. No. 1453, AAC the Transfer of an Application for the Appointment of a Conservator to the Superior Court or other Probate Court

In contrast, 1453 is a dramatic, sweeping, potentially dangerous proposal that will give the Superior Court concurrent jurisdiction over conservator matters. This will inevitably lead to forum shopping. What possible rational can there be for allowing for a right to transfer into the Superior Court with all the attendant delay associated with Superior Court matters, or for allowing "any person" the right to apply to the Superior Court to challenge the probate court's jurisdiction?

Allowing transfer to the Superior Courts will result in increased cost, delay, and complication for matters that are extremely time sensitive. Delay in these cases is never in the best interests of the ward. Is the intent to assure competent legal representation of the incapable and infirm? Is the intent to assure full employment for attorneys? What other possible reasons could there be for requiring that a writ, summons and complaint be attached to each and every probate court application?

A great deal of testimony before your committee last year dealt with a failure by some legal counsel, appointed by the probate courts, to adequately represent the interests of these people who, for one reason or another, were incapable of handling their own affairs. This problem was not addressed last year and is not addressed in this bill. One possible solution is contained in the other bill, 1439, this would be the creation of a Panel of Attorneys qualified to represent the incapable and infirm similar to the existing panel for commitment proceedings, probable cause hearings, quarantine, and commitment of alcohol or drug-dependent individuals.

Testimony last year indicated that "the majority of the cases where DSS files petitions [for conservators] are in the Greater Hartford area" and indeed the decision in *In re Angela Robinson v. Probate Appeal Hartford*[ii] that found the appointment of two conservators illegal and invalid came out of the Hartford Probate District.

S.B. 1453 reflects an ignorance of the effectiveness and efficiency of the local probate courts and is an overreaction to the incessant barrage of selective, opinionated reporting in the press resulting from **two** unfortunate cases, one from Waterbury and one from Manchester and neither justified from what I have read in the Superior Court files. A transfer of cases to the Superior Court is not in the best interests of Connecticut's aged and infirm, and 1453 should be rejected.

Respectfully submitted,
Russell A. Kimes, Jr,.

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[i] 157 Conn. 150, 251 A.2d 49 (1968)